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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO,
TUESDAY,
FEBRUARY 7, 1950.

THE HONOURABLE W.F.A. TURGEON, K.C., LL.D. - CHAIRMAN

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F.M. Covert, K.C. G.C. Desmarais, K.C.	Royal Commission on Transportation
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J. Paul Barry	Province of New Brunswick Province of Nova Scotia Province of Prince Edward Island
F.R. Hume M.L. Rapoport	Canadian Automotive Transportation Association

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TUESDAY, FEBRUARY 7, 1950.

MORNING SESSION

HAZEN HANSARD, K.C., RECALLED

THE WITNESS: May it please the Commission. Last night I was reading the Canada Steamship Lines Brief and I had got to the top of Page 5. To continue:-

IV. AN EXCEPTIONAL RATE MAKING WEAPON

It is clear from the nature of agreed charges themselves that their introduction into the Transport Act, as Part V thereof, was made by way of exception to the general rules of rate making above noted. The Privy Council recognized this in the C.N.R. vs. C.S.L. case (supra) where Lord MacMillan said at Page 214:-

> "The exhortation in s. 3, sub-s. 2, applies to all the board's functions, including that of approving agreed charges. The opening words of s. 35, sub-s. 1, are intended only to indicate that agreed charges may be sanctioned notwithstanding the general provisions as to the universality of charges."

This exceptional weapon was intended to afford carriers subject to control special means with which to meet the competition of other carriers not so subject. It was never intended to enable regulated carriers further to compete inter se. Because agreed charges, if employed without restriction, could very rapidly have brought about a complete disruption of the rate structure, effectively destroyed all semblance of rate control and in fact defeated the very purpose for which the Transport Act was passed, Parliament laid down a number of safeguards, the principal of which are as follows:-

(a) Approval of the Transport Board as the regulating authority was required;

(b) Strict rules as to prior publication and notice to other interested parties coupled with the right to oppose approval were laid down;

(c) Interested parties were given a right to provoke a re-hearing on the question of approval after one year;

(d) The two Railway Companies, indeed all rail carriers, where competing, were required to join in making any agreed charge;

(e) The Board was directed to have regard, in considering the question of approval, to the effect of the proposed agreed charge on the net revenue of the carrier making it and on the business of any shipper objecting to the approval;

(f) The Board was directed "to have regard to all considerations which appear to it to be relevant", which was held by the Privy Council in the C.N.R. vs. C.S.L. case (supra) to include the effect of the proposed agreed charge on the business of a competing carrier;

(g) It was laid down that the rate fixed by the agreed charge must be expressed in cents per hundred pounds so that it could be related to normal tariffs;

(h) The right was given to any competing shipper to apply to the Board to have the same rate fixed for his business;

(i) A general right of review in the national interest on complaint to the Minister "by

a representative body of carriers" was provided for.

All of the foregoing safeguards save the last are included in Section 35 of the Transport Act. The amendment to Section 35 now suggested by the Canadian National Railways in its Submission herein (Pages 171 to 181 inclusive) would do away with all but the last two of such safeguards.

V. EFFECT OF CNR'S PROPOSED AMENDMENT TO SECTION 35.

If the amendment suggested by the Canadian National Railways in its Submission were adopted, this would permit any regulated carrier to employ the agreed charge, indiscriminately and without control, for the purpose of capturing business fromits competitors, thus completely disrupting the established rate structure. It could and in all likelihood would provoke a ruinous rate war between the Railways themselves, with the agreed charge as the weapon. Moreover, it could and would place the water carriers in an impossible position since, as pointed out below, the agreed charge is not available to them in practice, although ostensibly available in theory. Unrestricted use of the agreed charge would enable a carrier to quote entirely unremunerative rates solely for the purpose of driving its competitors out of business which they might otherwise enjoy or at least hope to compete for on equal terms. It is significant that the one carrier which is least concerned with producing net revenues, namely, the Government financed Canadian National Railways, is the promoter of this proposed amendment. It is also highly significant that the privately owned and operated Canadian Pacific Railway, in its Submission, far from advocating any such amendment of Section 35, contents itself with a general recital of the operation of the

existing provisions regarding agreed charges and sums up the matter in these words (Page 88):-

> "These regulations unquestionably serve to protect fully the interests of the shippers and of competing carriers. The fullest publicity is given, well in advance, of any proposed agreed charge, and there is every opportunity for all shippers to make sure that no undue preference or unjust discrimination will result."

VI. THE POSITION OF COMPETING SHIPPERS UNDER THE PROPOSED C.N.R. AMENDMENT.

The retention, by the proposed C.N.R. amendment, of the right of a competing shipper to seek participation in the benefit of an agreed charge is not as generous as it might at first appear when the following points are borne in mind:-

(a) With no approval required and only such notice as is prescribed for competitive tariffs, the agreed charge would come to the attention of competing shippers only as an operative *fait accompli*.

(b) Removal of the requirement that the rate fixed by the agreed charge must be expressed in cents per hundred pounds and no requirement as to how the consideration be expressed could make it impossible for any competing shipper (not to mention carrier) to determine what the effect thereof would be on its business.

VII. THE DUTY OF THE BOARD TO CO-ORDINATE AND HARMONIZE THE OPERATIONS OF ALL CARRIERS

It is obvious that the unrestricted use of the agreed charge, such as is contemplated by the proposed Canadian National amendment, would render the task of the

Transport Board an impossible one. To provide on the one hand for regulation and control of rates chargeable by the several transportation media and on the other hand to permit any one carrier to make agreements at will derogating from the rates, terms and conditions established by such regulation and control, would be absurd.

THE CHAIRMAN: In that statement you have made there you talk of derogation from the rates but these agreed charges are all derogations downwards?

THE WITNESS: That is so.

THE CHAIRMAN: They cannot exceed rates?

THE WITNESS: In the nature of things, Mr. Chief Commissioner, I do not see how they would exceed them because obviously when you are endeavouring to buy somebody's business with a special agreement, you are going to offer him better terms.

VIII. THE POSITION OF THE WATER CARRIERS

Canada Steamship Lines Limited and other inland water carriers engaged in the package freight business in direct competition with the Railways on the one hand and the trucks on the other, have since 1938 been subject to the same regulation and control and subjected to the same unregulated truck competition as the Railways. From the point of view of the water carriers, the most important of all safeguards provided in Section 35 of the Transport Act as it now stands is that by which the Board, as found by the Privy Council, may have regard to the effect of any proposed agreed charge on their business as competing carriers. The reason for this is often overlooked. The fact of the matter is that the water carriers are not on the same footing as the rail carriers and other regulated and unregulated carriers in two fundamental respects:-

(a) From the economic point of view, while water transportation is cheaper, it is necessarily much slower and less far reaching than rail transportation or that of the other media. Were it not for the fact that the water carriers can operate at lower rates than the Railways and other media, practically no traffic would in the nature of things move by water. Arising out of this, it is and has always been accepted both before and since regulation of water rates, that those rates, while bearing a definite relationship to rail rates on like commodities between competing points, shall be lower than such rail rates by a differential reflecting on the one hand the advantages to the shipper of speedy rail transportation and on the other hand the lesser cost to the shipper of the slower and more restricted water transportation;

(b) Above all however, there exists a climatic condition in this country which places water transportation at a distinct and peculiar disadvantage qua all other forms of transportation. This arises from the fact that the water carriers are and can be in operation only during the navigation season, i.e., for some six or seven months a year, while the rail carriers in particular, and indeed all other forms of transportation, operate the year round.

It is of course of the essence of the agreed charge that it will be made for a considerable period and certainly for a minimum of one year. The statute itself contemplates this minimum, since it provides for an application for review after an agreed charge has been in effect for a year. In the circumstances therefore it is a very simple matter for carriers such as the Railways to buy the favour of individual shippers by offering them an all year round and possibly unremunerative rate in return for the exclusive right to handle their business.

This kind of competition, if carried on extensively, as it doubtless would be in the absence of existing controls, could only result in forcing the established water carriers to the wall. It is no answer to the water carriers to say to them, "You can go out and make your own agreed charges." The fact is that they can only offer service during the navigation season and consequently cannot contract to carry all the business of any shipper because that shipper must use the rails and/or the trucks during the wintertime.

IX. THE C.N.R. SUBMISSION

In the C.N.R. Brief it is implied that, prior to the advent of truck competition, the Railways had a monopoly on the transport of freight in Canada. This is not the case. Water transport was the first in the field and has been competitive from the outset. Road transport came second and the Railways third. It is true that the Railways enjoyed a monopoly in those areas in which they alone served, i.e., in all areas where waterways were not available. It may also be true that that monopoly has been cut into by the extension of the highway system and the advent of trucks. It has however in no way been affected by water competition since the waterways, of course, have not been extended. Possibly the very generous franchises given the Railways, as well as the heavy direct and indirect financial assistance they were and are being afforded by way of land grants and otherwise, constituted partial justification at the outset for the regulation of their rates, but no such consideration can have any bearing on the problem today. Regulation of rates is now and for many years has been necessary in the national interest, not only for the protection of the shipping public but

also for the protection of the carriers themselves against the effects of ruinous competition which has from time to time arisen. As between the Railways themselves, Parliament recognized this latter feature in the legislation enacted by which the Railways were compelled to put into effect cooperative measures such as the pooling of passenger trains, etc.

X. THE NECESSITY FOR FULL PUBLICITY

It is of the essence of rate regulation that regulated carriers should be obliged to make their rates public and available to all. Where a departure from the regular published rates, such as is necessarily involved in an agreed charge, is to be made, even greater publicity than the normal filing of tariffs is essential. The C.N.R. proposes that the existing requirements, such as the prior notice, should be done away with. The only reason set out for such proposal, and indeed for the proposal that prior approval of the Board should be dispensed with, appears to be that delay in bringing agreed charges into effect results. Such delay is and ought to be inherent in the employment of so radical a departure from the normal rate making method. Any lack of publicity could only work to the unfair disadvantage (a) of competing shippers; and (b) of competing carriers. The same objection, it may be said, also applies to the proposal contained at Page 192 of the C.N.R. Brief that the Railways or other carriers be permitted to revert to the practice, found objectionable by the Transport Board, "of handling traffic under special rate notices in lieu of under freight tariffs and, where advisable, of publishing such special rates in a regular tariff at a later date".

XI THE PUBLIC INTEREST

Water transport has always been and continues to be the cheapest. It is the competition of low water rates which has tended to keep rail rates down to proper levels, which would not necessarily have been the case had the Railways enjoyed any such monopoly as the C.N.R. Brief seems to imply. It is clearly in the public interest that this competition should be preserved on a fair and equitable basis and it can only be so preserved if the water carriers are permitted to live and not be driven out of business by such a grossly unfair departure from established rate making principles as the amendment advocated by the C.N.R. would permit. From the point of view of public interest, too, it is obvious that it would be most undesirable, as Parliament foresaw in the Transport Act, to have the railroads competing among themselves through the medium of agreed charges, particularly where no control would be exercised by the Board and the railroad making the agreed charge would not even be required to state the consideration for it in terms of normal rate making. Parliament foresaw the unfairness and folly of permitting a Government subsidized railroad to compete with its privately owned and operated rival on any such terms and the same argument applies as to the right to protection of other privately operated and long established forms of transportation such as the water lines.

XII. THE SITUATION IN GREAT BRITAIN

It is entirely beside the point and misleading to refer to the operation of agreed charge legislation in the United Kingdom, where the circumstances are entirely

different. This complete lack of similarity was commented upon by Lord MacMillan in the C.N.R. vs. C.S.L. case (supra) where he said at Page 214:-

> "Reference was incidentally made to Great Western Ry. Co. v. Chamber of Shipping of the United Kingdom (1937), 2 K.B. 30). In the Supreme Court judgments it is mentioned only in the judgment of Kerwin J., concurred in by Hudson J., and there only to observe that it is of no assistance in the present case. Their Lordships agree. That case arose on an imperial statute confined in its operation to railways, and turned on different language and different considerations from those with which the present case is concerned."

(Page 14300 follows)

It is hardly necessary to point out that, even if the Engligh legislation applied to water carriers, they are limited in England by no such navigation season as is imposed by the Canadian climate. Furthermore, there is of course no such competitive situation between rail and water lines in England as is created by the system of waterways we have here extending half across the continent.

Apart from the fact that there is no parallel between the two situations, it is quite impossible to draw any conclusions from the comparative gross revenue figures set out in the C.N.R. brief. It is the effect of the net revenue of the carrier which concerns the national interest and to which Parliament directed the Board to have regard in subsection (13) of Section 35 of the Transport Act.

XIII CONCLUSION

It is submitted that the agreed charge is an exceptional method of rate making, the existence of which would have no justification whatever were all forms of transportation subjected to proper control. For so long as it is permitted, it must be circumscribed by all necessary safeguards to prevent one regulated carrier from taking an unfair advantage over other regulated carriers. The safeguards now contained in the Transport Act, as supplemented by the Privy Council decision in C.N.R. vs. C.S.L. (supra), are the very minimum necessary in this connection. It is further submitted that the only and ultimate solution to the problem must be that all forms of transportation be subjected to such regulation by one controlling body as will secure their healthy economic operation, protection of the shipping public and prevention of further transportation rate wars which in the long run

work to no one's advantage. Such control must be had regardless of jurisdictional problems. Once it is obtained, the agreed charge, as a temporary expedient which negatives the very basis of rate control, should disappear.

The whole respectfully submitted.

Now, Mr. Chairman, I apologize for reading that somewhat lengthy document, but on behalf of Canada Steamships what I would like to emphasize is this, that the position taken in the Canadian National Brief on this subject seems to ignore the fact, so far as the regulated water lines are concerned, that they were made subject to regulation by the 1938 statute.

That regulation so far as that particular kind of business is concerned, is identically the same as the regulation to which the railways themselves are subjected, but so far as the water lines are concerned there is the fundamental difference that they operate only during six or seven months of the year and can only operate then due to the winter season.

Now, a moment's thought makes it apparent that when you come to endeavor to negotiate an agreed charge with a shipper, you are not meeting any incidental momentary competition. What you are seeking to do is to get that shipper's business, or as much of it as you can, for as long as you can or for keeps. Any shipper who is going to make a permanent deal with a carrier in that way wants an all-year-round service, and he is not going to tie himself up to ship all his business by water carrier during the summer only.

Therefore, my first point is that Canada Steamship Lines and other water carriers engaged in this business, cannot go out with this weapon, if you like to call it that, and buy up the business of any shipper

because they are just not in a position to contract to handle all his business all the year round. Therefore, although they are subject to the same regulation and control in regard to their rates as the railways, they are not in a position to use this weapon which, I think it may safely be said, was brought into Canadian legislation to enable regulated carriers to deal with competition from unregulated carriers which by reason of our jurisdictional problems in this country are not, or probably are not, subject to the legislative control of the Dominion authority.

Now, in the Canadian National Brief reference is made to the case which was fought out between the Canadian National and --

MR. FRIEL: Mr. Chairman, if I may interrupt, are we to hear argument or evidence this morning from Mr. Hansard?

THE WITNESS: I am submitting a Brief.

THE CHAIRMAN: The Brief is argumentative.

A. It is.

Q. As I think all Briefs are more or less. Perhaps this one is more.

A. Perhaps I am laboring under a misapprehension.

THE CHAIRMAN: No time is being wasted though Mr. Friel. After all that is the important consideration. If we didn't hear this now, we would have to hear it later. Are you at any disadvantage? I don't think you are.

MR. FRIEL: Well, I might claim surprise, but really I am not very surprised.

THE CHAIRMAN: I know, but are you not now acquainted in advance with the arguments against your Brief?

MR. FRIEL: Yes, sir.

THE WITNESS: I would say this for my friend's benefit, Mr. Chief Commissioner, that I will do no more arguing than the Brief he has already submitted.

THE CHAIRMAN: All right, we will accept that. Now, you are not going to argue all this over again?

A. No, absolutely not. I think I can say this, that what I am about to say is factual. I am talking about a case which was referred to in the Canadian National Brief and which I referred to, and I just wanted to point out - -

Q. Go ahead with that case. What about it?

A. I just wanted to point this out to the Commission, that as I read the Canadian National Brief the implication is that the effect of that decision of the Privy Council is to prevent the railways from entering into agreed charges in any case where the water carrier has carried any minor insignificant part of the business in the past.

Q. Now, is that distinguished judgment referred to?

A. That is exactly the same one and that is why I refer to it so frequently in mine. The point I am making is this, Mr. Chief Commissioner, that the case of C.N.R. v C.S.L. was a case involving the traffic of two large manufacturers of surgical supplies and surgical dressings and that sort of thing.

Now, as appears from the record in that case and from the judgment of the Transport Board in that case, the water carriers there, prior to the initiation of these agreed charges, had been carrying 50% of the business of those two shippers and they had been carrying that not

just as a casual thing. This was not something they had stolen from the railways. It was business that they had and which by these agreed charges the railways were seeking to take away from them. Now, I say that is a very different proposition.

THE CHAIRMAN: And what happened, what was the result of your intervention?

A. Well, the result of our intervention was that the Transport Board refused approval of the agreed charges. Then the railways - the C.N.R. anyway, perhaps I should not say the "railways" - the C.N.R. applied for a re-hearing, for the matter to be reopened on the basis that the Board should not have had regard to the effect on the business of the regulated water carriers of the proposed agreed charge. The Board then stated a question, as it has power to do under the Railway Act, it stated a question for the opinion of the Supreme Court: whether or not under the Transport Act the Board had power to take that into account in deciding whether or not to approve. The Supreme Court by a majority judgment held that they had, and properly had, the power to look at that.

The matter was carried by the railways to the Privy Council, and the Privy Council confirmed the decision of the Supreme Court.

Now, the point I am making, however, on that case, is that there was not a case where the agreed charge was being used to meet water competition in the sense of meeting something new that had come into the picture. It was an attempt to obtain business from the water lines by means of an agreed charge, and it placed water lines, for the reasons I have stated, at an unfair disadvantage. The Railway Board held that in

all the circumstances and having regard to the effect on the business of the other regulated carrier, regulated water line, that it would not approve these two agreed charges, and the result was as I have stated.

Q. Then is this proposed amendment of the Canadian National Railways an effort to get around that decision, do you think?

A. I think one can read the Canadian National Brief as saying just exactly that, sir. That is the way I read it. I may be wrong, but the Canadian National Brief says that the Act, interpreted as it has been by the Privy Council, is preventing them from making agreed charges.

They then propose without particular comment, at page 180 of their Brief, that Section 35 be replaced by a new Section 35 in which all these safeguards that I have enumerated in my Brief are left out except two: one, that a competing shipper may apply to come in under an agreed charge rate if he can show that he is in a position to do so, and two, they do not purport to deal with Section 36 which is the one that provides for an application or a complaint to the Minister in the National interests, as it says, by a representative body of carriers. They do not attempt to touch that, but all the others, the two fundamentals: that is, control of the matter by the Board of Transport Commissioners, the necessity of securing approval by reason of that control, and the prior notification to the public that these agreed charges are being entered into; they propose to do away with them. They say it is very troublesome to

them in making an agreed charge to have to take a month or two months to negotiate the thing, and that is just a lot of bother and therefore they want to do away with that.

But if the Commission will have regard to the statements made before Parliament when the Transport Act was originally under consideration , everyone expressed concern about the necessity for adequate notice and the necessity for control, and that is why those very careful controls were put in.

The Board is primarily directed by the Transport Act to co-ordinate and harmonize all forms of transport that are brought under its jurisdiction. How can they do that if on the one hand they are given power to regulate rates, and on the other hand the statute is so worded that any regulated carrier can go out and make an agreed charge - not, mind you, on the ordinary rate-making basis recognized in this country of so much in cents per hundred pounds, but on any consideration without restriction they can make a deal in other words and get all the business of a shipper, publish that as a competitive tariff on three days notice and then for the first time, with an operative tariff confronting them, competitive shippers and competitive carriers find out about it.

They are proposing to cut out the requirement that Parliament put in that the two railways or any two railways competing (and when I say the two railways I mean the two principal railways in Canada) must participate in any agreed charge that is made. So that with that cut out, the two railways can then compete with each other on these agreed

charges. They are proposing, as I say, that this cents per hundred pounds provision, which is a very important one, should be taken out.

Now, let us consider that for just a moment. If there is no specified means by which a rate agreed under an agreed charge is to be established, then there can be all sorts of concealed considerations, deals about terminal facilities, deals about this and deals about that. The competing shipper or the competing carrier can look at one of these agreed charges published after the event until he is black in the face, and never be able to look at that and say, "that is nothing to affect my business this way or that" because on the face of the document it won't appear what the real consideration is.

That, I submit, is the reason why the requirement was put in the statute that any agreed charge must be an agreed charge on a basis of cents per hundred pounds, which enables anybody looking at the agreed charge to relate it to the ordinary tariffs and see what the difference is. If you don't have some such provision as that, then I am a competing shipper and I don't know what my competitors arrange with the railways, I don't know what they are up to. Or I am a competing carrier and I don't know what they are up to, I don't know what the rate they have made is.

I say that that is a very important safeguard, that they are all all-important, and that it is highly necessary, if the agreed charge is to be retained as a means of making rates, that these safeguards should remain on the statute book without change.

THE CHAIRMAN: Are you not arguing that they ought not be retained?

A. That the agreed charge ought not be retained? I will go this far with you Mr. Chief Commissioner. My own view is that the agreed charge is a bad means of making rates where you have a regulatory system, because it is contrary to regulation, it is the anithesis of regulation. I say that it can only be justified (and I say this on behalf of my client) it can only be justified where it is used as a temporary expedient pending adequate control of all media of transportation. That is our position.

We do not think the agreed charge is a good thing. It is on the Statute Book, it is something that is dangerous and must be controlled, and it is only justified on the Statute Book for so long as adequate control of all competing transport agencies has not been brought into effect.

That in substance is the submission I make. I have no evidence to offer as such. I don't know what my position is. Would you like me to get in the box?

MR. FRIEL: You have rather offered some. Perhaps you had better get in the box.

THE WITNESS: I am perfectly prepared to answer questions about which I know.

THE CHAIRMAN: I think it is important. It is the practice. As far as the railways are concerned do you intend to enter into the case now with Mr. Hansard? What I want to say is this. We are not going to precipitate any argument upon people, because there is a time for argument, unless you want to make

it now. Mr. Friel's objection, for instance. You are not compelled now to answer anything Mr. Hansard has said.

MR. FRIEL: No, I am not prepared to argue the case.

THE CHAIRMAN: You are not going to be called upon now, either, but in the meantime do you wish to put any questions to him?

MR. FRIEL: Yes, my lord, in my turn.

THE CHAIRMAN: Mr. Hume has something.

MR. HUME: I have one or two questions, Mr. Chairman.

CROSS EXAMINED BY MR. HUME:

Q. I understand your position as counsel and solicitor for the Canada Steamship Lines and as the author of this Brief, and I have only one or two questions that I think may be necessary so far as I am concerned to get the record straight. The first is a reference on page 9 of your Brief.

A. Perhaps I should have it with me.

Q. I will bring it up.

A. Thank you. Page 9, you say?

Q. Page 9 under your heading number VIII, "The position of the Water Carriers" in the first sentence. Perhaps if I read it-then I will ask my question about it.

> "Canada Steamship Lines Limited and other inland water carriers engaged in the package freight business in direct competition with the railways on the one hand and the trucks on the other, have since 1938 been subject to the same regulation and control

"and subjected to the same unregulated truck competition as the railways."

The words I wanted to ask you a question about were the final words of that sentence where you refer to unregulated truck competition. What I wanted to clear up was, do you mean by that, unregulated by the Board of Transport Commissioners?

A. Yes.

Q. That is, you are not suggesting in this Brief that the commercial truck competitors are not regulated in the provinces in which they operate?

A. My understanding, sir, is that in most of the provinces there are some forms of regulations of truck transport. I believe they vary and I would not undertake to say what they are. My understanding is that there is that regulation, they are regulated. My reference is to unregulated in the sense of being regulated under the Transport Act.

(Page 14312 follows)

Q. Thank you. Now then, I think, maybe, you have answered this question in your general argument, but I am interested in knowing whether or not the Canada Steamship Lines has, in fact, entered into a contract with a shipper which would be within the definition of "agreed charge"?

A. I think I can answer you in this way: I do not believe they have entered into anything of that nature by an agreed charge since they have been regulated. As to what they did before, when they were not subject to regulation under the jurisdiction of the Transport Act, I dare say they may have had some contracts then, but not since the regulations. They have had no agreed charges.

Q. In view of the fact that some of the provinces and some of the persons filing submissions here have advocated the abolition of agreed charges altogether, what is the view of the Canada Steamship Lines in regard to that? Are you in favour of their complete elimination at this time?

A. I think I have already answered that question in this way: that if it is to stay, I want to see the safeguards retained, and my client wants to see them retained. But if it disappears, I do not think any water carrier would be particularly sorry, because it is of no particular help to them, because they cannot avail themselves of it. But I am not suggesting that it cannot be a useful weapon suitably controlled in the case of the other regulated carriers who can use it. I must admit that is a qualified answer.

THE CHAIRMAN: Does anybody else wish to question Mr. Hansard? Very well, Mr. Friel.

CROSS-EXAMINATION BY MR. FRIEL:

MR. FRIEL: Q. You have said nothing about that part of your traffic which is not regulated, which does not come under the Transport Act.

A. No, it does not come under the Transport Act.

Q. Goods involved are excluded.

A. They are expressly excluded by section 37, I think; if you look at the last section in part V.

Q. Goods in bulk are defined to mean the following:

"(e) 'Goods in bulk' means the following goods laden or freighted in ships, and except as herein otherwise provided, not bundled or enclosed in bags, bales, boxes, cases, casks, crates or any other container;

grain and grain products, including flour and mill feeds in bulk or in sacks,

ores and minerals (crude, screened, sized, refined or concentrated, but not otherwise processed), including ore concentrates in sacks,

sand, stone and gravel,

coal and coke,

liquids,

pulpwood, woodpulp, poles and logs, including pulpwood and woodpulp in bales,

waste paper loaded as full ship's cargo,

iron and steel scrap and pig iron."

A. That is what the section says.

Q. That is a definition of goods in bulk which are excluded from that part, or from traffic which is excluded from regulation.

THE CHAIRMAN: What do you mean?

MR. FRIEL: They are not regulated by the Board of Transport Commissioners; in other words, they

can charge any rate they wish, or do as they please.

THE WITNESS: Bulk carriage has never been brought under regulation.

MR. FRIEL: What part of your traffic consists of bulk?

THE CHAIRMAN: Is that part of the Transport Act that you have been reading from?

MR. FRIEL: Yes.

MR. FRIEL: Q. In dollars and cents how is it divided? Divided between bulk and package goods?

A. I might be able to find that out for you, Mr. Friel.

Q. Would you find it out for me, please?

A. Yes, I shall try to be as helpful as I can. What you want is a general percentage. I would like to give you a more definite answer, but I understand from my client that the figure is probably somewhere in the order of 60 per cent for bulk to 40 per cent for package freight. We have no bulk figures here, so that must be a guess. I can get you something more definite, but the bulk carriage is the larger.

Q. The larger part of your traffic?

A. Yes.

Q. I wonder if Mr. Van Wyck would file with the Commission a breakdown for the year 1948, let us say, of your bulk and package goods?

A. Yes, I think that can be done. We will do that.

THE CHAIRMAN: Q. Over the bulk portion of their shipments there is no control?

A. That is true. None of the bulk carriers have been subject to control. All of the grain moves on such bulk, and as my learned friend states, they all

move without control of the rates.

MR. FRIEL: Q. One would think that they were wholly regulated after hearing my learned friend this morning.

A. Are you asking me a question or making an observation?

Q. I am making an observation.

A. I did not intend to convey that impression. I think my brief makes it perfectly clear that I am talking about package freight.

Q. You certainly leave the impression that you are as much regulated as the railways.

A. I do not think so. But if so, I certainly did not intend it.

Q. When you speak of having, or rather your client not ever having made an agreed charge since you became regulated, are you referring to agreed charges under the Transport Act?

A. Yes.

Q. Or are you referring to a private contract for the carriage of goods?

A. I am talking about agreed charges under the Transport Act.

Q. You have never asked to have such a contract approved?

A. I do not think so.

Q. Does Mr. Van Wyck know that?

A. No; I understand we have none.

Q. But you have contracts for bulk goods; for the carriage of bulk goods?

MR. VAN WYCK: Well, I do not think there would be for ore. Grain is booked in Winnipeg, I understand.

MR. FRIEL: Q. There is nothing to stop your company from making an agreed charge outside of the Transport Act?

A. So far as grain is concerned?

THE CHAIRMAN: Q. And in fact you do make them?

A. I am at a loss to answer that question. Mr. Van Wyck says he thinks there may be some. I heard him say so. But I do not think anything in the nature of an agreed charge, talking of a particular shipper's business for a stated period of time, is entered into

Q. It is a legitimate question.

A. I would be glad to get the information for you, but my understanding is that an agreed charge in the sense that you take all of a particular shipper's business for a lengthy period of time, probably, is not entered into. But there certainly are agreements made about charges, otherwise there would be no business done.

MR. FRIEL: Q. An agreed charge does not have to cover all the traffic, but any portion of it, be it 5 per cent, 10 per cent, anything up to 100 per cent?

A. I agree.

Q. Is there anything to stop your company from making an agreed charge in respect to bulk goods, but still not affecting package goods, which would not have to be filed under the Act? You could use your bulk goods to make a contract, to be sure of getting all the package freight?

A. You are suggesting that we could, by making an attractive deal in respect to bulk goods, in fact, capture the package freight business.

Q. Right.

A. That is just what I was going to say; I doubt whether there are very many shippers who deal in both bulk and package freight, but there may be. That could be done, but I do not think it is.

Q. You admit that it could be done?

A. I suppose so. After all, people are human.

THE CHAIRMAN: Q. In so far as your bulk carriage is concerned, which is the greater part of your business, you are not regulated by anybody, or are you?

A. So far as rates are concerned, that is perfectly true. There is no doubt whatever about that. Of course, I would like to say this.

Q. That is a fact?

A. No doubt, but I would like to say this, that those two parts of the Canada Steamship Line business are so distinct that they are run as separate departments. We come here to talk about the package freight department. But the other department is run by somebody else. They might as well be two companies, but they are not.

MR. FRIEL: Q. In addition to your lack of regulation over bulk goods, there is a limitation on the size of the vessel. Such regulations only apply to vessels over 500 tons?

A. Yes, and we have had a great deal of trouble over vessels under 500 tons, the so-called schooners.

Q. And to vessels only on the Great Lakes?

A. From the Island of Orleans up to the Great Lakes.

Q. Including all of the Great Lakes?

A. It is all set out in the statute.

THE CHAIRMAN: It includes what?

MR. FRIEL: The area to which the regulations pertain is that of the Great Lakes including the

St. Lawrence and the western end of the Island of Orleans.

THE CHAIRMAN: But that is only in regard to package shipment?

MR. FRIEL: Yes, sir.

THE WITNESS: It might be a matter of interest to state that so far as Canada Steamship Lines are concerned, with the exception of the passenger boats which run down to the mouth of the Saguenay and up the Saguenay, their operation is all out of that regulated area.

THE CHAIRMAN: You are a company?

A. A company, oh, yes.

Q. You are not government controlled in any way?

A. Oh, no.

MR. FRIEL: Q. Are you an officer of the company?

A. No, sir. I think I was at one time called Commission counsel, but that is as close as I ever got.

Q. I would gather from your brief that you conclude that, due to the shortness of your navigation season, it is not practical for your clients to make agreed charges under the Transport Act?

A. Yes. I think that is my position.

Q. You say that the Act implies that the agreements with a shipper will be in effect for one year?

A. In the nature of an agreed charge, they are a long term thing, in my view; and if you cannot contract to handle a man's business the year round, he is not interested.

Q. You suggested in your brief that the agreement must be in effect for at least a year?

A. I say that the implication is for a year.

I concede that it can be made for less than a year, but I doubt if that is done. I do not know.

Q. I would point out that the explanation of one year from the date of approval only refers to an agreed charge which has been made without the restriction of time?

A. That is true. You would know better than I about these 39-odd agreed charges. But my understanding is that they are all at least for a year.

Q. The tendency would be for them to be in excess of a year, for a year or longer. The Act does provide, however, that the Board may approve an agreed charge for a year or for such period of a year as it thinks fit.

A. My point is that in practice they are made for at least a year and that we are not in a position to offer that service.

Q. On page 2 of your submission, about the middle of the page, I read:

> ". . . in other words, to give the contracting carrier a total or partial monopoly of his business for such period. Its effect of course is to deny to all other competing carriers the opportunity of competing for the business so tied up or of obtaining any portion of that business while the agreed charge remains in force, . . ."

Doesn't that all go to the competitive situation between carriers? Once the competitor gets the business, of course the other one loses?

A. Oh, yes.

Q. In competition, one gains and one loses, and there is that shifting back and forth all the time?

A. That is true. But where you have traffic moving under the ordinary published rates, at least it

is open to the other carriers to compete for the business. But where the shipper has tied himself up for a period with one carrier, he is not interested in talking to anybody else.

Q. Usually before that shipper is tied up, you have the same opportunity to make the same arrangements?

A. That gets back to my point that as far as regulating water lines are concerned, because they operate only during the navigation season, they cannot compete with the railways which operate during the full year.

Q. But they can, for some months, make a competing attractive offer. For example, you accept traffic before the opening of navigation, and you will probably start accepting traffic next month.

MR. VAN WYCK: On March 15, as prescribed in your own tariffs.

MR. FRIEL: That has nothing to do with it, the fact that it may be prescribed in our own tariffs.

THE WITNESS: There is no doubt about it, that we accept goods for shipment.

COMMISSIONER INNIS: Q. Do you file tariffs on all your bulk goods?

A. No, sir. Bulk is not regulated, and the tariffs are not filed.

Q. They are not?

A. No.

Q. But they are filed in the case of the railways?

MR. FRIEL: Oh, yes.

COMMISSIONER INNIS: Q. In the case of regulated rates, they are filed?

A. Oh, yes. All the tariffs are filed in the case of regulated rates.

Q. So it might not be easy to find what the rates were in the case of bulk?

MR. FRIEL: There would be as much secrecy about that as in the case of agreed charges.

THE CHAIRMAN: Both of you gentlemen are familiar with the Transport Act. Does the whole of Part IV apply to water shipments?

MR. FRIEL: Yes, my lord. That is entirely applicable to water carriers.

Q. The whole of Part IV?

A. That is the licensing provision?

THE CHAIRMAN: Q. The tariff and the rate provisions?

A. Yes, they apply; but they do not apply to the transport of goods in bulk.

Q. By virtue of what?

MR. HUME: By virtue of section 38.

THE CHAIRMAN: Section 12, subsection 3, says:

"The provisions of this part shall not apply to the transport of goods in bulk."

THE WITNESS: Section 34 says:

"The provisions of this part shall not apply to the transport of goods in bulk."

Now, when you come to Part V, that is the agreed charge one, you see, they have repeated that and they say that, in section 38:

"The provisions of this part shall not apply to the transport by water of goods in bulk."

(Page 14327 follows)

THE CHAIRMAN: Will you frame your question over again, Mr. Friel?

MR. FRIEL: I have asked the question and the witness has answered.

THE CHAIRMAN: Can you not put it to him again?

MR. FRIEL: The point is, my lord, that I did not want to repeat what we had gone over. If it is all right, my lord, we will just go along.

Q. You state at page 2 of your brief, Mr. Hansard, dealing with agreed charges, "It is therefore the direct antithesis of normal rate making practice." You object, or you must be objecting to what you call the normal rate making practice?

A. Normal regulated rate making practice.

Q. It is not normal rate making practices for the Canada Steamship?

A. As far as the regulation is concerned, yes.

Q. So far as packaged freight?

A. No.

Q. That would not be applicable to rate making for motor cars, for example?

A. Except to the extent that may be regulated provincially; I don't know about that.

Q. Would you agree that it is a fair proposition that the shipper should have the advantage of the lowest cost of transport and the one most suited to his requirements?

A. Yes, I think so, from the point of view of the country.

Q. You would agree to that as a general proposition?

A. I think so.

Q. As long as the railways stayed within that proposition, and charged rates which were remunerative,

do you find any objection with the agreed charge giving the shipper that advantage?

A. Yes, I can, Mr. Friel, because I think in the nature of things the rates that tend to be fixed by agreement with the intent of meeting business from other competitive carriers tend to be a little lower than you suggest.'

Q. Well, I am assuming that they are not lower than you suggest that I suggest; but they are remunerative?

A. Remunerative --

Q. On that basis, have you any objection?

A. May I adopt the words "proper charges"? I would say as long as they are proper charges I have no objection, because I am in the position of being able to meet them; but if somebody comes along and offers something that is not a proper charge, and which puts me in a position where I can't compete, then I object.

THE CHAIRMAN: Q. You are using the words "proper charges". You really mean a charge with which you cannot compete?

A. No, sir.

Q. What do you mean?

A. I say a proper charge that is fixed on remuneration -- that is adequately remunerative -- because there is no sense in running a transportation company on the basis that it does not make enough money to live. A remunerative rate, I have always understood --

Q. That is what you mean by a proper charge, a remunerative one?

A. Yes.

MR. FRIEL: Q. As long as the railways would charge remunerative rates you have no objection to agreed charges?

A. No, I won't go that far with you. I have objected to uncontrolled agreed charges, because I say that once the deal is made then it is too late on your proposition that there shall be no prior notice.

Q. Supposing that part of the Act were allowed to stand, if our amendment were changed, that would remove that objection, so that there would be prior notice?

A. I think there should be prior notice, and I think there should be approval by the Board.

Q. Allowing both those things and a proper basis of rates -- that is proper within the sense that you mean it -- would you then withdraw your objection?

A. Would I withdraw my objection to what?

Q. To agreed charges?

A. To agreed charges as such?

Q. Yes.

A. I have stated my position about agreed charges and I will state it again.

Q. Never mind stating that; there is no need to repeat it. I just want to find out if there is some common ground about the agreed charges.

A. I think I should be entitled to answer your question. I say that in my view agreed charges, if you have regulation of rates, are not a good thing in principle because --

Q. The difficulty is that we have not got regulation of rates, only partially?

A. Exactly. But I say the only justification for agreed charges until such time as we have proper regulation of rates, is that you haven't got that control --

Q. I do not agree with you.

Q. Well, I don't ask you to.

Q. Do you stop there?

A. Yes.

Q. I was still trying to find that common ground that we might have. Assuming you might have to have agreed charges, or that agreed charges were desirable until there is full rate control, just what would satisfy the Canada Steamship, or what would satisfy you?

A. I have said, and I have said clearly, the minimum that would satisfy Canada Steamships in the way of safeguards are what is in the Act now.

Q. You have read in our submission that the shortest time in which we have had agreed charges approved is 34 days and the longest time a year and ten months. Now you must admit that there is something a little bit out of the way there?

A. I say that if those delays are inherent in the proper application of these controls, then they have got to be suffered. That is my view.

Q. Would you not agree that there is some limited time in which we should expect to have an agreed charge approved, and still be fair to everybody?

A. As long as there is an adequate delay, I suppose that is so.

Q. Would you say two months?

A. I haven't given it any thought.

Q. Would you agree that a year and ten months is absurd?

A. I don't know what the circumstances were, and you don't mention them in your brief.

Q. Supposing we amend our brief that we want delay no longer than three months, would the Canada Steamships object to that?

A. I would have to ask the Canada Steamships about it.

Q. Is there anybody here whom you can ask?

A. Not necessarily so. It does not seem reasonable to have to wait, I agree, for a year. I don't know what the circumstances were, but if you had to wait --

Q. I say that it is rather ridiculous to have to wait a year and ten months.

A. I would say so.

Q. If we are going to have agreed charges is it not fair to ask that they be approved with reasonable delay?

A. I would say that you cannot lay down a hard and fast rule, because circumstances vary; there would be quite a bit of investigation in some cases.

Q. Now, on page 2 of your brief you set out the accepted principles of rate making?

A. Yes.

Q. Also at page 3 you set out these principles. Are you referring to all common carriers, railways, water carriers, motor carriers . . .

A. I am referring principally to the rail carriers.

Q. Principally to rail carriers?

A. That is where this has been . . . I talk about both common carriers and regulations in the same breath. I am talking about regulation of rates.

Q. You say in paragraph (e):

> "That one carrier shall not offer 'unremunerative' rates, whether for the purpose of capturing business from competitors or otherwise."

Have you any rates in mind which are charged by railways and which are unremunerative?

A. No, sir; I have no rates in mind whatever. The fact is, I don't know anything about rates as such.

(Page 14335 follows)

Q. Now, on Page 5 of your brief, where you describe the agreed charges as an exceptional rate making weapon, that too would be in respect of rail rates?

A. That too would be in respect of regulated rates.

Q. Whether by rail or by water?

A. Yes sir.

Q. Would everything you say there practically on Page 5 be also applicable to normal competitive rates? Under that special destructive element -- you refer to destructive elements. That special destructive element is introduced in agreed charges -- that is not the normal competitive rates?

A. Well, of course, the expression "special destructive element" is yours but the difference between that and a competitive rate is I think that it ties up that particular shipper's business for a period. There may be others but I cannot think of them at the moment.

Q. Competition between carriers does not necessarily disrupt the transportation system generally. You have competition in your field in the bulk carriage of goods, do you not?

A. Yes, bulk competition.

Q. Would it not be truer of unregulated rates,goods which move at unregulated rates?

A. Would not what be truer?

Q. That there would be more tendency to have competition to disrupt transportation?

A. Oh yes, sure.

Q. Don't you often find that in your field in the carriage of bulk goods?

A. No sir. We have found it from time to time. There undoubtedly has been unregulated and undesirable

competition.

Q. You have keen competition in that field?

A. I think so, yes.

Q. You have not agreed to eliminate competition in steamship companies?

A. No.

Q. You are following normal company policies?

A. You are not trying to get me under the Combines Act, are you?

Q. I think we would have some difficulty in getting you under there by admissions anyway.

COMMISSIONER INNIS: How do you explain the fact of most of your competition for bulk goods with railways and trucks?

A. Well, one thing, Mr. Commissioner, I suppose, is that a great part of those bulk goods lends itself particularly to water transport. I think that is one reason. They are heavy goods and goods that do not need to move quickly and that sort of thing. That is one reason why there is competition between bulk carriers more than competition between bulk and regulated carriers for that sort of thing.

Q. Does it mean that you have better facilities for handling bulk traffic?

A. I do not believe you can generalize on that but certainly for a lot of it we have the facilities to handle bulky goods. You can do that sometimes on the water easier than you can on land. I think that is probably so.

MR. FRIEL: Would you know or would Mr. Van Wyck know if your carriage of package goods is a profitable side of your business?

A. I can speak generally on that. My understanding is that it was operated at a small profit in 1939 or 1938. During the war years it was operated with a loss until the rate increases came into effect and there was a very small profit in 1948.

Q. Has it ever been in the position where it involved a large profit?

A. "Large" is one of thosedifficult words. I do not think so -- not within recent years.

Q. You say in 1939 there was a small profit?

MR. VAN WYCK: No, since 1939 there was either a loss or a small profit.

THE WITNESS: There was a profit in 1939.

MR. FRIEL: So that during those years if we had applied for approval of an agreed charge, the Board, if it had to consider the effect of the businessof the Canada Steamship Lines, would not have had to be too concerned about it?

A. I don't know; you have to keep going.

Q. You don't have to keep going at a loss?

A. You try to in the hope that eventually you may make a profit.

Q. The reverse would be true about your bulk traffic? That is the profit making side of your business?

A. Yes, I suppose that a profit was made. We are not rolling in profits, you know.

Q. You have had a couple of accidents?

A. Well, that is irrelevant.

Q. But it does affect profits?

A. No, not the least bit; we carry insurance.

Q. Now, on Page 13, dealing with the public interest you state:

"It is the competition of low water rates which has tended to keep rail rates down to proper levels,-"

A. I will go along with you on this, that that is probably one of the more argumentative portions of our submission. I do not expect you to agree entirely with it, Mr. Friel.

Q. We might rather suggest that perhaps it is the competition of the railways that has kept the water rates down to a lower level?

A. I think the Commission is in a position to judge between us on that.

Q. It is important or the rail rates would certainly have some effect on your water rates?

A. Oh indeed; there is no doubt about it. There is an inter-action there.

Q. And prevents excess charges and protects the public to that extent?

A. Sure thing.

Q. Now, there is just one other question here --

COMMISSIONER ANGUS: Are these proper levels that the rail rates have been kept to levels below those authorized by the Board of Transport Commissioners?

A. I do not quite follow that "authorized by the Board of Transport Commissioners".

Q. You are thinking of the competitive rates?

A. I am thinking of the rates that prevail, the going rates. I think that competition produces rates.

Q. Is the suggestion that the non-competitive rates are at too high a level?

A. The non-competitive rates? You mean the standard rates, sir?

Q. Yes.

A. Well, all I can say about that, and as I said before I am not a rate expert, all I can say about that is that I think there is a very small proportion of traffic moves at the standard rates.

THE CHAIRMAN: You are talking of steamships now?

A. No, rates generally, sir.

Q. But you are including steamships?

A. Well, the steamship rates are based on a differential scale under the rail rates and to that extent the same remark applies.

MR. FRIEL: On Page 9, dealing with the position of the water carrier, you say, in sub-section (a);

"From the economic point of view, while water transportation is cheaper --"

I think you will agree that that also is argumentative from the economic point of view?

A. Well, yes perhaps it may be argumentative; I think it is generally accepted.

Q. There are a few other things like navigation aids, canals and other things that are paid for by the country as a whole?

A. Yes, and there are such things as railway deficits and land grants and so on that are paid for by the country as a whole.

Q. We might also speak of the cash assistance given to the steamships which is quite a current problem, isn't it -- subsidies?

A. Not the Canada Steamship Lines that I know about; that is Trans-Atlantic.

Q. You go on:

"Were it not for the fact that the water carriers can operate at lower rates than the railways and other

media, practically no traffic would in the nature of things move by water."

That is as you say, because:

"While water transportation is cheaper, it is necessarily much slower and less far reaching than rail transportation."

Now, isn't it true that you have working arrangements with other carriers which extend your route beyond the water?

A. Oh yes, certainly.

Q. With the railways, for instance?

A. Well, obviously; there are such things as connecting carriers.

Q. And with trucks. You have working arrangements with truck lines?

A. No, we have connecting arrangements. There is one instance, I believe of canned goods.

Q. With what concern is that?

A. They are contracting carriers, that is.

Q. They do extend your reach?

A. A very limited extension, yes sir.

Q. Have you any interest in trucking concerns -- your company?

A. I have heard it suggested but I do not know the facts about that, Mr. Friel.

Q. It would be interesting to the Commission, I am sure, to know. For instance, we have heard it rumoured that you control Kingsway Transport?

A. I do not know what the facts are but that can be obtained if the Commission wants them. Personally, I do not see what it has got to do wi h what is going on here.

THE CHAIRMAN: Are the truck lines that you have in mind, Mr. Friel, complementary to the boats or are they run independently competing with other truckers?

MR. FRIEL: Well, I would expect most of them would be complementary and run independently of them.

THE CHAIRMAN: Are they intended to bring goods to the ships?

MR. FRIEL: Oh yes, sure. Would Mr. N. F. Howell, Secretary of the Kingsway Transport Limited, be associated with Canada Steamships?

A. Yes, I think he is.

Q. Do you know that he is?

A. I know there is a Mr. Norman Howell in Canada Steamships; I am not sure about the "N.F.".

Q. Is he a director?

A. Of Canada Steamships?

Q. Yes.

A. I don't know -- No he is not.

Q. Is he assistant secretary?

A. I think he is assistant to the secretary.

THE CHAIRMAN: Who is this man?

A. Mr. Norman Howell.

Q. But what is his other job?

A MR. FRIEL: He is secretary of Kingsway Transport Limited.

THE CHAIRMAN: Is that a line of trucks?

MR. FRIEL: Yes, my lord, and he is assistant to the secretary of Canada Steamships.

THE WITNESS: That is right.

Q. And Mr. E. G. Bowes of Kingsway Transport?

A. I have never heard of him, sir. He may be a Canada Steamship man but I don't know.

Q. And Mr. J. W. McGiffen of the Kingsway Transport Limited?

A. He was formerly an employee of the Canada Steamships. You can ask me about names indefinitely, Mr. Friel. If you want me to find out the facts, I will do it for you but I cannot answer these things. I come here and you start asking me about trucks.

Q. You don't know of any association?

A. I have heard it suggested there is a connection. Personally, I do not know. I was asked yesterday about it in the hall and I asked Mr. Van Wyck about it last night and he said he did not know.

Q. There seems to be an awful lot of absurdity about the fact of whether they control it or not?

A. If you wish me to get the information, I shall do so.

Q. I think it would be desirable, yes.

A. Well, I will answer that when I have the information, or would you prefer that I file it with the Board?

Q. I think it will be satisfactory if you file it with the Board. Do you know of Kingsway Transport Limited?

A. I have seen their trucks on the street; I don't know anything else about it.

Q. Do you know where it operates -- the extent of its operations?

A. No sir.

Q. Do you know whether they carry Canada Steamship Lines colours on their trucks?

A. No, I do not. Of course, there is nothing very significant in that because there are many cartage contractors who carry other peoples' insignia on their vehicles. I understand from Mr. Van Wyck that they are our Canada Steamship cartage contractors in Toronto, Montreal and Hamilton.

Q. Contractors?

A. Yes.

Q. Would you also file the number of trucks operated by Kingsway Transport and the routes?

A. I don't know whether I can undertake to do that. I will try.

Q. The extent of the routes, wherever they operate, between what points?

A. I think perhaps if you want to get information from Kingsway perhaps you ought to ask that kind of information from them. We will give you what information we can. I will file a statement.

Q. If it should develop that Canada Steamship Lines control Kingsway Transport, then it would be very easy for you to get that information?

A. It is probably going to be fairly easy for me to get it whether we do or not.

CROSS-EXAMINATION BY MR. SINCLAIR

Q. I just have one or two questions, Mr. Chairman. I take it, Mr. Hansard, that the view of your clients is that there should be regulation of the transport medium whether it be rail, water or truck. Is that correct?

A. Yes sir, I think that is so; I agree with you.

Q. And the reason why is because you feel that when these various transport media are unregulated it leads to the uneconomic or the possibility of the uneconomic use of the unregulated media. Is that so?

A. That is so. It is a question of past history, isn't it largely?

Q. Do you think that the interprovincial movement of highway transport is regulated today?

A. To be honest with you, I don't know. I do not think so -- certainly not under any federal statute.

Q. Well, it could not be regulated under a provincial one, could it ?

A. Well, I don't know; they might regulate it to the border or perhaps they would try that until disallowed as ultra vires.

Q. Well, when you are making your inquiries as to the Kingsway Transport Limited, I wonder if you would find out for me from the Vice-President and the President as to whether there is any effective control of the movement of rates or service of Kingsway Transport between, say, Toronto and Montreal?

A. I really must say to you, Mr. Sinclair, on that ground that I think you are getting awfully close to a question of law.

Q. I asked you for an "effective" control.

THE CHAIRMAN: Where does this company operate?

MR. SINCLAIR: As I understand it, sir, it operates all the way from Toronto right through to Three Rivers in Quebec.

THE CHAIRMAN: That it operates in Ontario and Quebec?

MR. SINCLAIR: Yes, and has a large interprovincial business. It is the largest single highway operator in Canada.

THE CHAIRMAN: Then, what is it you want Mr. Hansard to tell you about?

MR. SINCLAIR: Well, there was some suggestion, I think, in response to a question put by my friend Mr. Hume that there was some provincial regulation of these trucks and I asked Mr. Hansard whether there was any effective regulation of the interprovincial movement

and I asked him if he would mind asking the head of the company of Kingsway Transport, if he found that they were controlled by Canada Steamship L nes or the Canada Steamship Lines had an interest in them --

THE CHAIRMAN: Isn't that a roundabout way of getting at information that is published and that you could get just as well otherwise?

MR. SINCLAIR: I don't know, Mr. Chairman.

THE CHAIRMAN: Surely we can find out more definitely what their regulations are?

MR. HUME: Mr. Chairman, I recall only that Mr. Camille Archambault gave evidence here last fall representing the Automotive Transportation Association of the Province of Quebec and his evidence was in French but it was subsequently translated and I can get the volume number, but I remember him saying that the Board in Quebec does in fact control or regulate the transport companies in Quebec that run into Ontario and the way it was done was that if they felt their rate from, say, Quebec City to the City of Toronto was not adhered to by them then, when they come back across the Quebec border they are penalized in some way and that it is effective control. As to the legality of it, I don't know but that is apparently the way they are controlling the movement of these vehicles from the Province of Quebec into Ontario, remembering Mr. Chairman, that in Ontario there is no rate regulation but in Quebec there is.

The Kingsway Transport, of course, have their head office in Montreal and if that is there, then the way the Board in Quebec do it is that if they do not charge the rate they should between Montreal and Toronto, then they call at the head office in Montreal and find out why and penalize them in some way. They have no jurisdiction once they cross the Ontario border but they have to come back to Quebec again.

MR. SINCLAIR: That is exactly the point. I know that the C.S.L. is a very reputable company, and I am sure that the Kingsway Transport, if they have an interest in it or control it, will also be a very reputable company, and that is why I wished Mr. Hansard to find out from the manager, he not having been before this Commission, whether there is any - and I used the word effective control.

THE CHAIRMAN: Why should Mr. Hansard find out from the manager? You say his company controls - -

MR. SINCLAIR: I think it does.

THE WITNESS: Mr. Chairman, my thought about this is that I want to be helpful to my friend, but it does seem to me that it gets very close to being a question of law, whether or not there is control of rates by the provinces.

THE CHAIRMAN: We are not discussing whether or not certain regulations are intra vires, the question is what are the regulations?

MR. SINCLAIR: Are they effective, sir. We now have it from the witness that they are there. The point I was trying to get at is the effectiveness of the regulations.

THE WITNESS: I really must say that I don't believe anybody--certainly I cannot and I don't think anybody in Canada Steamships could--answer that question for you. I think if you would want that witness to testify on that he should come here and speak for himself. Even assuming that Canada Steamships own or control a trucking company, that does not put Canada Steamships in the position of being able to testify

about these things.

Q. I just thought, seeing that you were here, maybe you could help.

A. I will if I can, but I foresee difficulties.

THE CHAIRMAN: Maybe if you could find out what there is in regard to this particular company. If nobody else can give the information we could get it from the company.

A. If I can find out anything that appears helpful, Mr. Chief Commissioner, I will be delighted to send it on.

MR. SINCLAIR: Q. Have Canada Steamship Lines considered whether - -

THE CHAIRMAN: Pardon me a moment, before that. I might say that the problem looks to me to be this. You have inter-provincial trucking between these particular provinces, Quebec and Ontario?

MR. SINCLAIR: Yes.

THE CHAIRMAN: Now then in one of the provinces there is a control of the rates.

MR. SINCLAIR: Yes.

THE CHAIRMAN: In the other province there is no control of rates?

MR. SINCLAIR: Yes, my lord.

THE CHAIRMAN: What is the practice in such a conjuncture? You might find out.

MR. SINCLAIR: There is one question of law that arises. Of course that is not what we are dealing with.

THE CHAIRMAN: I say, what is the practice in that conjuncture?

A. As to the control of rates on the inter-provincial movements?

Q. Yes.

A. Well, if I can find out anything I will be glad to send it on.

Q. If you can find it out you had best come forward and let us know.

MR. SINCLAIR: That is what I was trying to find out.

THE CHAIRMAN: Then perhaps you can find out much more efficiently yourself, Mr. Sinclair.

MR. SINCLAIR: No, I think Mr. Hansard would likely know some of the men better than I do.

THE WITNESS: I know none of them.

MR. SINCLAIR: Could get to know them.

THE CHAIRMAN: There is a question there on which we do wish to be informed.

MR. SINCLAIR: Yes, either Mr. Hansard will get it, or else I will write them later and see if I can get it. Now, the next point I had in mind was: has Canada Steamship Lines, Mr. Hansard, ever considered whether any regulations that are now in the Transport Act regarding agreed charges should be amended or altered so that the media, for instance, water lines, would agree among themselves on agreed charges; that the railways would agree among themselves between competing points on agreed charges; and the trucks, if the trucks did come under Dominion jurisdiction, if the Dominion did exercise its jurisdiction, that they would agree among themselves, and that there would not be any necessity for the inter-relation that has now been found to be in the Act? Has the Canada Steamship Lines ever considered that problem?

A. I don't know how Canada Steamship Lines or any other body corporate could consider the thing, but I will say this to you.

Q. I meant, its officers.

A. I don't know, but I will say this, that as far as I am concerned merely because you have two railroads, two of the railways agreeing on the one hand and entering into agreed charges, and all the water lines agreeing on the other hand and entering into agreed charges, does not meet the problem I raise in my Brief, because you don't get away from the distinction that exists between water carriage and rail.

Q. Well, it would preclude any wasteful and uneconomic competition between competing carriers in the same media. That is correct, is it not?

A. I don't know, I don't see that.

Q. Was not one of the objections that you made in your Brief to the Canadian National submission, that the taking away of the provision of Section 35 now that required rail carriers between competing points to agree, that it would bring about uneconomic competition between two railways in agreed charges ?

A. The Act as it now stands calls for them, where competing, to participate in any agreed charge, and my suggestion is that if that were removed that would enable one rail carrier to compete with another rail carrier by means of the agreed charge.

Q. And thereby provide uneconomic services. I think that was the portent of the Brief.

A. The possibility is there.

Q. So that if the Act provided that each

media agree among themselves or participate in agreed charges, that would take care of that situation because there would be no advantage in putting on uneconomic services.

A. No, but it would not get away from the undesirable competition which arises as between different media.

Q. Well, let us just take the first one. Your answer to my question was this, that it would get away from any complaint as to the development of uneconomic transportation within each media. That is correct?

A. I think that is probably so.

Q. Now, in regard to the competing media of transportation, they have different costs of operation. I think that is one of the points in your Brief, is it not?

A. Yes.

Q. You say that water costs are lower than rail costs, so that you would agree, would not you, Mr. Hansard, that as long as there is the provision in the Transport Act that on an agreed charge it has to be shown that the net revenue of the carrier proposing it will be increased, that that should protect and it was meant to protect against any uneconomic agreed charge being put into effect?

A. It has to show that the net revenue of the carrier will be increased?

Q. The effect of it.

A. It has to show what effect - they have to take into account the effect.

Q. Which in practice means it has to show

that the net revenue position of the carrier will be improved.

A. I don't know that that is what it means.

Q. That has been the effect?

A. Maybe.

Q. You would not agree with that?

A. I don't think I am in a position to agree or disagree. I don't know.

Q. As long as that provision is in the Act, your fear about uneconomic agreed charges being put forward really is a fear that is not completely justified, is it Mr. Hansard?

A. Well, I think that is a matter of argument, sir, but I don't agree with you, no. I think that the agreed charge as it exists in the Act now works to the disadvantage of the water carriers.

Q. The point I wanted to make was that you have no facts. You say it is a matter of argument. I found difficulty cutting between argument and facts in your statement. It is purely a matter of argument? You have no facts to support the suggestion that you put forward to the Commission, is that correct?

A. What suggestion?

Q. That if you took away the necessity of considering the effect on water carriers, it would be detrimental to economic transportation policy.

A. I am speaking on behalf of a water carrier, sir. I am not talking about transport policy as a whole.

Q. No, but I thought you gave opinion evidence, here, Mr. Hansard?

A. That may be, but I am speaking on behalf of the water carriers when I say that if you take that out they are in an impossible position.

MR. SINCLAIR: Now, my understanding, Mr. Chairman, is that he gave opinion evidence in answer to your lordship, and he said "in my view" and "in the view of my clients" (he separated that) and to that I was putting the question.

THE CHAIRMAN: Evidence about what?

MR. SINCLAIR: About the desirability of agreed charges.

THE CHAIRMAN: Well, I think Mr. Hansard told us that in principle he does not favor agreed charges, but if there are to be agreed charges, leave the Act as it is.

THE WITNESS: That is my idea.

MR. SINCLAIR: I am just trying to find the reasons behind his opinion.

THE CHAIRMAN: Behind which opinion, that he wants the Act left as it is??

MR. SINCLAIR: He said he thought agreed charges were a bad thing, but as long as there were some unregulated transport media he thought that that would be the only reason under which they could be justified. I think that is a paraphrase of what he said.

THE CHAIRMAN: Then you want to argue with him as to whether agreed charges in themselves are a good or a bad thing.

MR. SINCLAIR: Well, he gave opinion evidence.

THE CHAIRMAN: What is that?

MR. SINCLAIR: I am just trying to find out

what facts he had behind the opinion he expressed.

THE CHAIRMAN: Then, if you were asked to state your objections to agreed charges in themselves, what would you say?

A. My objection to agreed charges is that they are not consistent with the normal system of regulating rates.

Q. That is what you have told us several times.

A. Yes, well I don't want to repeat myself again. That is the only reason I have. I think where on the one hand you have a law saying you must publish your rates and stick to it, and on the other hand a law saying that notwithstanding you can go and make deals on the side, I say that is not consistent.

MR. SINCLAIR: I am asking Mr. Chairman, whether he has any facts to support the suggestion when he says it is a bad thing.

THE CHAIRMAN: That somebody has been injured by it?

MR. SINCLAIR: That is right.

THE WITNESS: I cannot give you any details.

MR. HUME: Mr. Chairman, just before Mr. Hansard leaves the stand and so that the record may contain the information we were discussing a minute ago, I have discovered that the answer to that question is contained in the translation of Mr. Archambault's evidence at Page 9, the translation of the evidence which appears in volume 57 on the question as to the control inter-provincially of a company operating from Quebec, and here is Mr. Archambault's evidence translated into English:-

"MR. DESMARAIS: Q. Now, how are governed the truckers who for instance operate from Montreal to Toronto?

A. First they are required to obtain from the Board --"

(that is, the Quebec Board)

- - "a licence on which it is shown that they are engaged in transportation to Toronto. In addition they are required to file their rates with the Board.

Q. For transportation from Montreal to Toronto?

A. In the case of goods from the Province of Quebec to points outside its limits, they must also charge the rates fixed by the Board."

You asked the question:-

"They can carry these goods but as far as the border?

A. Yes, and if it is proven that a trucker when reaching Toronto was charging a cheaper rate the licence of such trucker would be cancelled."

That is Mr. Archambault's evidence on the way they are apparently controlling in the province of Quebec the movements of goods from Quebec to points outside the provincial limits.

COMMISSIONER INNIS: Is not the question not that of competition in the sense of the Canadian Steamship Lines from Montreal to Toronto or to Hamilton, but the question which is important is the sort of competition which develops between trucks and steamships, say, between Hamilton and Western Ontario or from

Montreal to Eastern Quebec. That is not affected by the situation you have described.

MR. HUME: No, it is not affected, Dr. Innis, because while apparently the movement of goods from Quebec into Ontario is regulated as to rates, from evidence we have heard, from Quebec, the movement of goods from Ontario to Quebec is apparently not because there is no rate regulation in Ontario or goods moving inside the Province of Ontario. Certainly, say, from Hamilton to Kingston there is no regulation at all.

COMMISSIONER INNIS: I was assuming that the problem arose as a result of regulated package freight on the Canada Steamship Lines plus another type of regulation in provincial jurisdiction and that consequently the railroads presumably were suffering from this type of competition, but that is not your point.

MR. SINCLAIR: They could work to defeat any activities of the railroad.

THE CHAIRMAN: Mr. Hume, there remains this point perhaps. What happens in the case of goods shipped from Toronto to Montreal, that is, not the other way but from Toronto to Montreal. Would those goods have any regulated freight rate applied to them to the points they would cross into Quebec?

MR. RAPOPORT: The goods moving interprovincially must move by motor carriers who are licensed both in the province of Ontario and in the province of Quebec.

THE CHAIRMAN: Yes.

MR. RAPOPORT: In the province of Quebec there is statutory authority for rate control. That

THE CHAIRMAN: In Ontario?

MR. RAPOPORT: He shows a through rate from Toronto to Montreal. Now, just to be perfectly candid with this Commission, it is proper to say that that system of control is, shall I say, in the process of gestation, it is under very active consideration. I know that from personal knowledge and any day it may be an accomplished fact.

THE CHAIRMAN: By whom? Who is considering it, the two provinces?

MR. RAPOPORT: The Province of Quebec under its Board established under the Transport Act is now considering that matter. I say it is under very active consideration and will be in due course finalized.

THE CHAIRMAN: Well, is the province of Ontario doing anything similar?

MR. RAPOPORT: No, because in the Province of Ontario we do not have rate control.

THE CHAIRMAN: I know.

MR. RAPOPORT: To the extent that it is authorized by statute.

THE CHAIRMAN: And they are not moving on it either?

MR. RAPOPORT: If I said they were, Mr. Chairman, I might have the Combines Act Department at me, so I would prefer not to answer that question.

COMMISSIONER INNIS: You have answered it.

THE WITNESS: I wonder if I might be excused Mr. Chairman, I have another appointment.

THE CHAIRMAN: You see, you are here now and we must see what decision we can make.

MR. RAPOPORT: What I rose on my feet to

answer, Mr. Chairman, was the inference created by counsel for the C.P.R. who said that because the witnesses for the Canada Steamship Lines might have some arrangement or deal or through rate with a motor carrier, they could then defeat the railway. I say that from what I know of motor carriers that is not so because the witness has told the Commission that there is only a through rate on canned goods going somewhere between Cornwall and Ottawa and there is no established practice.

MR. SINCLAIR: It is a fact - -

THE CHAIRMAN: Mr. Sinclair, both of you, I don't think this is the time to start arguments between counsel now.

MR. SINCLAIR: But I do think in fairness - -

THE CHAIRMAN: In the meantime we have Mr. Hansard here in the box. Has anyone any questions to put to him?

MR. COVERT: I have a few.

MR. RAPOPORT: I just wanted to object to any inference that may have been created by any statement by the counsel of the C.P.R.

MR. SINCLAIR: I would just like to say that if Mr. Rapoport who is constantly giving evidence at the counsel table here wants to bring someone in here who will talk about contract rates of truckers between Montreal and Quebec, we will be very glad to cross examine and we hope the cross examination would be of benefit to the Commission.

(Page 14360 follows)

THE CHAIRMAN: All right. Now, for the time being, let us deal with Mr. Hansard, who is anxious to get away.

MR. COVERT: Q. I have just one point I would like to take up with Mr. Hansard. It was intimated that the Canada Steamship Lines may have some agreements for bulk traffic. I just wanted to find out, if they do have those agreements, if they are on the basis that they preclude the customer from shipping by some other transport means?

A. That is a thing about which I have doubt. I do not think so, but I will have to find that out. Neither Mr. Van Wyck nor I are in a position to answer that question today.

Q. I think it might be very interesting if you could find out whether it is the practice of the Canada Steamship Lines to make an agreement to provide that they must haul by steamship and by no other means.

A. If I may, then, when I get a copy of the transcript, I will note these various points and submit a statement on them. And if that is not sufficient, of course we would be delighted to come back at any time.

THE CHAIRMAN: Very well.

COMMISSIONER INNIS: Q. I want to ask one question. Who are your main competitors by water?

A. In the package freight field?

Q. Yes.

A. We are much the largest in that field. Then there is the Northwest Steamship Company, and the Northern Navigation, which is really a division of Canada Steamship. But we do the great bulk of the package freight business.

Q. Northern Navigation is part of your firm?

A. Yes, it is a division of Canada Steamship.

Q. So, in a sense, you pretty well have a monopoly?

A. No. There are lots of other people who are licensed to do the business. But I think we do the bulk of it.

COMMISSIONER INNIS: That is all.

MR. COVERT: Q. In the case which is referred to in your brief, that of C.N.R. and C.S.L., the case which went to the Privy Council, in that case, the goods which were being hauled, was that traffic going from the east to the west?

A. Yes.

Q. And as a matter of fact, both the shipping companies, the Canada Steamship and the railways combined in an effort to move those goods?

A. Only some of them. Some moved on water, some on lake and rail, and some all rail. The figures are given in the Board's judgment.

MR. COVERT: Thank you.

THE CHAIRMAN: Very well, thank you, Mr. Hansard.

THE WITNESS: Thank you.

THE CHAIRMAN: Who is next, Mr. Covert?

MR. COVERT: Mr. Chairman, yesterday you asked Mr. Sinclair for a statement on international rates. He now has his statement and perhaps we should have it now?

THE CHAIRMAN: Very well.

MR. SINCLAIR: Mr. Chairman, yesterday during the submission of the T.S. Woollings & Company brief, I undertook to secure certain information. And I now have a statement which I would like to put on the

record. A copy of it will be forwarded to Mr. Duffy.

Joint through rates between points in eastern Canada and points in eastern United States are governed by the official classification applicable between points in the United States. They are not governed by the Canadian Freight Classification.

Rates between points in eastern Canada and points in eastern United States are invariably increased at the same time and to the same extent as rates between points in eastern United States. Such rates are not again increased when increases take place in intra-Canadian rates.

When the United States railroads apply to the Interstate Comeerce Commission for an increase in rates within eastern United States, such railroads, at or about the same time, make application to the Board of Transport Commissioners for Canada for authority to make such increase in freight rates between points in eastern Canada and points in eastern United States effective at the same time and to the same extent as may be authorized within the United States. A similar application is at the same time made to our Board of Transport Commissioners by the Canadian railways.

The Board of Transport Commissioners for Canada do not take any action with respect to these applications until the decision of the Interstate Commerce Commission is made known and a copy received by them, the Canadian Board. It is then the practice of the Board of Transport Commissioners to grant authority to make the same increase in rates between points in eastern Canada and points in eastern United States as may have been authorized within eastern United States.

The most recent petition of the United States railroads in this matter is in connection with increased international rates and charges, 1948, dated 19th October,

1948, in which petition the following statements were made:

"The conditions which call for and necessitate an advance in rates and charges within the United States apply equally to international rates and charges, and, in fact, the revenue within the United States on international traffic forms part of the revenues which are inadequate to meet the needs of the United States carriers."

THE CHAIRMAN: Parts of the revenue which are what?

MR. SINCLAIR: Inadequate to meet the needs.

THE CHAIRMAN: Inadequate?

MR. SINCLAIR: Inadequate to meet the needs of the United States carriers. This is an extract from the petition of the American carriers to the Canadian Board.

"An advance in all of these rates and charges equal to the advance made on rates and charges within the United States is necessary in order to afford petitioners the measure of relief necessary in the premises. There is a large and important movement of railway traffic between points in the United States and points in Canada; much of this traffic moves on joint rates which are quite generally related to the rates applicable within the United States; it is, therefore, necessary to the continued orderly movement of such traffic that there should be increases in the rates applicable thereon harmonizing with those authorized for application within the United States."

The petition of the Canadian railways in support of the petition of the United States railroads to which reference is made, dated 3rd November, 1948,

contained, among others, the following paragraphs:

"(a) Joint Rates and Charges. Your petitioners --"

In this case being the Canadian railways.

"-- believe that the statements made in the Petition of the United States Railroads aforesaid are true and correct, and represent that it is expedient in the public interest, that the continuity of joint through rates and charges should be preserved from points in the United States to Canada and vice versa; also between points in the United States through Canada, in order to permit the Canadian Railways to continue to participate in this traffic via established routes operating through Canada.

4. The international rates and charges are applicable between points in Canada and points in the United States, in both directions, and also between points in the United States through Canada and involve participation by railways of both countries. They are published as joint rates and charges not related to, nor divisible at, the boundary between the two countries. They apply in general over various routes between the same points and involve, as between the railways of the two countries, varying bases of division."

In this connection I would direct the Commission's attention to the Board of Transport Commissioners' Orders 71774 of 31st December, 1948, and 72905 of 12th August, 1949.

Should the Interstate Commerce Commission and the Board of Transport Commissioners not permit the same increase in international rates, and at the

same time as rates within the United States are increased, there could not be a continuity of equality in through international rates through all gateways. It can be readily seen that were such increases confined to the proportion of the rates accruing to the United States railroads and were the rates between two given points, like Montreal and New York, applied by many routes, some of which have a short haul in Canada and a longer haul in the United States, while other routes have a long haul in Canada and a short haul in the United States, the continuity of through rates on the basis of equality would immediately be destroyed. It is only by increasing the through rates in the same manner as within the United States that such equality can be preserved.

Your lordship asked, at page 14240 of the transcript, if the Interstate Commerce Commission followed the practice of applying Canadian freight rate increases to international joint through rates in the same manner as the Board applied American increases. As I said earlier in this statement, they do not apply them again.

THE CHAIRMAN: They do not what?

MR. SINCLAIR: They do not apply the increases twice. But as Mr. Covert pointed out yesterday, this point has not arisen. I am instructed that this is because the American carriers have today received quicker relief from the Interstate Commerce Commission than have the Canadian carriers from the Board of Transport Commissioners. So that when I said "Yes", the answer was wrong. The point has not arisen, so there is nothing to show what the position would be. In theory, the same reasons which are applicable, and as set forth in these two petitions, would be applicable if, in future, the Canadian roads

were not fortunate enough to have their relief quicker than the relief given to the American carriers.

MR. COVERT: I wonder if Mr. Sinclair could tell us if the difference in the level of rates between the two countries was really the thing which caused the difficulty, and would it not be likely that if the level of rates were higher in the United States, that the carriers would likely want higher rates applied on both sides of the border?

MR. SINCLAIR: I was going to come to that. That was the second point, I think, which was raised, and maybe this will answer it.

THE CHAIRMAN: Am I right? We seem to be dealing all along with rates in the eastern parts of the continent, eastern Canada and eastern United States.

MR. SINCLAIR: Yes; and the reason is that there are many more through rates between eastern Canada and eastern United States than there are between western Canada and the central United States. The submission of Alberta was that traffic which was moving in the east was and should be within the rates which were pulled up beyond what we could get by making arrangements with the American carriers, and that we were never able to do anything more than that. The second point was the one raised by the suggestion of Mr.Duffy.

THE CHAIRMAN: That is right.

MR. SINCLAIR: That when rates between points in the United States were increased, international joint through rates between points in Eastern Canada and eastern United States for the same or similar distances should not follow the United States increases.

It is submitted that, generally speaking,

there is a higher basis of rates in the United States than there is in Canada. But we submit that if the joint through international rates were not increased along with the United States increases, irrespective of the comparisons mile for mile, that great dislocation would take place; and we have two examples which we think illustrate the point.

First of all, there are movements, and these are actual movements; these are not paper rates. There are movements of pulpwood from points on the New Brunswick division of the Canadian Pacific Railway to Rumford, Maine. Let us say the rate from Houlton, Maine, and Woodstock, New Brunswick, to Rumford, Maine, are equal. It would be manifestly unfair to increase the rate from Houlton, Maine, to Rumford, Maine, and not at the same time make a like increase in the rate from Woodstock, New Brunswick. That is, when there is an American carrier serving an American mill from an American port, and a Canadian carrier serving that same mill from a Canadian point, that would be where the American carrier would be increasing the rate, on the American haul, against the position of the American producers of pulpwood in favour of the producer in Canada, where he has control by becoming the carrier into the mill at Houlton, Maine.

The second example is that of newsprint. The rate on newsprint paper from Millinocket, Maine, and Shawinigan Falls, Quebec, to Chicago, Illinois, is the same. Should the rate on newsprint paper from Millinocket, Maine, to Chicago, Illinois, be increased and the rate from Shawinigan Falls not increased in a like manner at the same time, the producer of newsprint paper at Millinocket, Maine, would certainly complain

bitterly to the Interstate Commerce Commission about the reasonableness of the rate which he was being charged, and the pressure would be on the American carriers in connection with these rates. It is therefore the submission of the Canadian Pacific that only by increasing the rates in the same manner and at the same time that rate equality of the character described can be preserved. That statement is in accord with instructions which I have received.

COMMISSIONER INNIS: This presumably is a convention which is drawn up, this question of handling the increases in rates by the Board in relation to the I.C.C.

MR. SINCLAIR: Yes, sir.

COMMISSIONER INNIS: Do you know how far back it goes?

MR. SINCLAIR: I think that ever since -- there was one exception to it, which, I think, came out when Mr. Matheson was on the stand, when the Wartime Prices and Trade Board, at one stage, and for a short period, refused to go along with this situation; and I think we put on the record the difficulty which was occasioned by it, or I wrote a letter to Commission counsel. And that, Mr. Jefferson recalls to my mind, is only in regard to import and export rates, where the Canadian rate was related to the American ports, that was the port differential. But Dr. Innis' question was how long was this practice of the Board of applying Interstate Commerce Commission increases on international traffic, or how far back does it apply. Mr. Jefferson says it has been in force ever since he has been in Canada, which is since 1913.

COMMISSIONER INNIS: How does it involve some sort of contradiction in Canadian attitude towards exports? Let us say, if exports are going to Great Britain, we subsidize or lower the rates, but if exports are going to the United States we are compelled to increase the rates. That does not affect the railway companies, but it is a matter of national policy.

(Page 14375 follows)

MR. SINCLAIR: There is this situation too, is there not, Dr. Innis, that of movements to the seaboard? The Canadian carriers control the whole movement; and on movements to the United States you have always to bring in to line the American carriers, and sometimes there is not one of them, but five or six or seven. There are these various gateways; and if we cannot negotiate and make deals with them, they will just take out the rates.

COMMISSIONER INNIS: I understand that, and as I say the railways are not involved. But it does seem to me to apply a contradiction to the national policy. It is a question from the standpoint of the national policy, whether they should subsidize these rates as they subsidize the rates to Great Britain, and have a consistency in the policy. That is not a question that concerns you?

MR. SINCLAIR: No, but it is a matter that we may have something to say on.

MR. COVERT: Before we leave that point, Mr. Chairman, it seems to me that we never quite get the complete information about the international rates that we need, and there are quite a few points that are still not settled. For example, the first example given by Mr. Sinclair --

MR. SINCLAIR: You mean as to the pulpwood?

MR. COVERT: Yes.

MR. SINCLAIR: I am sorry, but I have just given my copy to the reporter. Is there something you wanted?

MR. COVERT: In that case Mr. Duffy said yesterday that there was never any relation between that American rate and the Canadian rate. Now that point is not cleared up, because I gather from Mr. Duffy that there is, I think --

MR. SINCLAIR: One hundred and twenty-five per cent?

MR. COVERT: I think it is the relationship of 125 per cent. So that in the example which Mr. Sinclair gave of the Houlton, Maine, and Woodstock and some other points in Maine, to another point in Maine, does not, it seems to me, apply. I do not know the answer, but that is one of the points that will have to be cleared up.

THE CHAIRMAN: I may say now that we will have to depend on you, Mr. Covert, and Mr. Desmarais, to get that information from the outside.

MR. COVERT: Yes.

THE CHAIRMAN: You will have to go into this question more thoroughly, and get the points clearly.

MR. COVERT: Yes; but it does seem a pity to me that we cannot get it clear on the record.

THE CHAIRMAN: But you could put it into the record after you get it.

MR. COVERT: Yes.

THE CHAIRMAN: But I think the railways will have to make it available.

MR. SINCLAIR: We shall be very glad to do so, Mr. Chairman. I think the difficulty here is that the scale which Mr. Duffy was talking about is not applicable to the territory in which I gave the examples.

MR. COVERT: That may be so, but the point that I would like to find out is why the witness and the railways can never seem to get into any agreement on the subject of international rates at all. Mr. Duffy so said, at page 14242 of the transcript, but it seems to me we never get the question of the international rates settled. I am bringing the point up now so that the railways will

have every opportunity to get the information, if they can, which must be under their control, and give that information to the Commission a little more clearly.

MR. SINCLAIR: We do not want to appear derelict; we are trying to do that.

THE CHAIRMAN: Mr. Sinclair, as a reminder, we are specifically committed to review the Railway Act with respect to such matters as guidance to the Board on international rates.

MR. SINCLAIR: Quite so.

THE CHAIRMAN: That is a specific commitment, and the time must come when we shall have all reasonable available evidence from all quarters on that question.

MR. SINCLAIR: Possibly the difficulty is that the men who are giving me my instructions understand the thing so completely, and I think I understand it when they talk to me, it may be that when I start to put it on the record I mix it up a little bit. I do not know.

THE CHAIRMAN: There is time yet to have the subject clarified and be made more complete. We look forward to it.

MR. SINCLAIR: We would be glad to answer any questions.

THE CHAIRMAN: Since we have to report on it we must have all the material before us.

MR. COVERT: May I point out one more thing, with a view to having a little more light thrown on it?

THE CHAIRMAN: Yes.

MR. COVERT: I should like to know exactly what Mr. Sinclair meant in his statement this morning. . . I should like to have his statement before me, but unfortunately he gave it to the reporter. I think he

referred to the interruptions; he referred several times, I think, to the continuity. I am not suggesting that there is anything wrong with the statement, but the thought that struck me was that I could not quite see why the continuity would be disturbed if the same increase was not granted in Canada. That is another point that bothers me. I am not suggesting that he is not correct in every way, but I think there should be some fuller explanation of that. It does seem to me that the question of international rates is very, very important. There is a tremendous dollar volume of traffic that goes over the international rates.

THE CHAIRMAN: Yes.

MR. COVERT: They have been specifically mentioned, as your lordship points out, in our order in council, and any information that we could get would be very helpful. I know the railways are probably in a better position to give it to us than anyone else. The particular statement made by Mr. Duffy, at page 14242, which I read over two or three times --

THE CHAIRMAN: What is that?

MR. COVERT: The statement of Mr. Duffy at page 14242 of the transcript, where he says:

"There is just one thing, and I believe Mr. Jefferson will bear this out. The attorney said that if the Canadian carriers did not accept this increase the American carriers would take the full increase on the through rate for themselves. I think that is cleared up in the Commission's decision when they say the joint through rate or factors of combination rates which are used in the movement of traffic to or from Canada or Mexico may be increased to the extent of their jurisdiction,

which means that only that portion of the rate which accrues to the American carriers will be increased under their decision, and not the full meausre of the rate from point of origin to point of destination and have it all accrue to the American carriers. They would only get the increase on their portion of the rate."

MR. SINCLAIR: I think, with respect, Mr. Covert, that we have made that clear many times, but I would be glad to put it again. It is this: the American carriers have no compulsion to make a joint through international rate. If they take out the route, that is one thing; they have the power to do that. Then the shipper is left with the combination of locals on the border.

There were some exceptions in Mr. Duffy's case, that I am instructed are being taken care of by the offer that was made to him. But the general rule is that the combination of locals make it higher than the through rate; and, if we did not go along with the American carriers, and the shipper was left with the local rates, he would be paying, we say, as much or more than if the American increases applied throughout, and the American carriers would be getting all the money and we would not be getting any of it.

I do not know that that makes it clear, but that is the way we understand the situation. Certainly questions of international rates and jurisdiction in regard to them have been before the courts many times, and there is no question about jurisdiction.

THE CHAIRMAN: Would the result, that you have just outlined, as beneficial to the American carriers, apply to the traffic going both ways, that is from Canada to the United States and from the United States to Canada?

MR. SINCLAIR: Yes, my lord; we would have the local rate at the border, or the local rate from the border, depending on which way the traffic was going.

THE CHAIRMAN: Very well then.

MR. SINCLAIR: Possibly the best thing to do would be to set out two or three questions, and then I would consult Mr. Jefferson and get some instructions and put that on the record.

COMMISSIONER ANGUS: Would the answer you just gave, Mr. Sinclair, depend a little on the relative length of the haul in Canada to the haul in the United States? If the haul in the United States were very short, would the Americans, so to speak, still have an advantage?

MR. SINCLAIR: There is of course the disparity, depending on the length of the haul in the United States. I do not think, Dr. Angus, that, dealing with the American carriers -- speaking from the little experience I have had with them -- they are pretty cagey on dealing with individual instances. They will take the over-all view; for instance, in the N.Y.C. or the Pennsylvania, places of destination which are close to the border and far away; it is then a matter of bargaining.

MR. COVERT: Mr. Chairman, may I put something else on the record?

Supposing, for example, there is the situation in the United States where they have, we will say, increases in rates of up to 68 per cent; whereas, at the same time in Canada the increases were only 21 per cent; presumably the 68 per cent increase would apply generally to all rates in the United States, including the international rates, that is the portion of the joint through rates, and then the American railways got that rate on the basis of an application showing necessity. It seems to me that in

the final result we have in Canada the situation where they get, say, a 68 per cent increase on their portion of the joint through international rate, whereas the rest of the rates in Canada may have only a 21 per cent increase.

MR. SINCLAIR: May I answer that point now?

MR. COVERT: Yes.

MR. SINCLAIR: If that is true, then the through rate which is on file with the Board is unreasonable. The question has been before the Supreme Court of the United States, and the Supreme Court has held that the through rate was an unreasonable rate, and forced the American carriers to put in local rates where American carriers did not have local rates to the border. I think the case is Lewis-Simas-Jones and involved shipments between Texas and Mexico.

If the proposition as put by Commission counsel is a governing factor in the rate situation, the rate would be an unreasonable one, and the Board in Canada has the jurisdiction, because the tariff has to be filed with them. They have no jurisdiction to put in the rate, but they can say that the rate is an unreasonable rate and they will not accept it.

THE CHAIRMAN: Have they ever said that? Have they ever taken such action?

MR. SINCLAIR: In Canada?

THE CHAIRMAN: Yes.

MR. SINCLAIR: I know they have in the United States; Mr. Jefferson says that he knows of none in Canada.

MR. COVERT: The reason for bringing these points up is that we have a few minutes at this time, and it does not seem a practical point at which to start another brief. I thought we might take this opportunity to bring up these

points, so that they can perhaps be studied a little more carefully.

The second thought is, supposing there is an increase granted in the United States, why must the same increase be granted in Canada on that joint through international rate? Why is that essential? Is it based on financial needs of the railways here? Is it the continuity to which they referred? Is that the guiding thought that makes it necessary that the increase should be the same right through? Does it bring about difficulty between the American and the Canadian railways with respect to a division rate?

For example, we will say there is a $4 rate from a point in Canada to a point in the United States, $3 of which is for the Canadian haul and $1 for the American haul; and we will say that the distances are 100 miles in the United States and 300 miles in Canada. Now let us assume further that the Interstate Commerce Commission grants an increase in the through rate, and there is an application filed in Canada at the same time. We will say that it is 30 cents on the dollar, or 30 per cent on the total; that is $1.20 increase, so that the through rate would be $5.20. Is there any reason why the American roads should not simply increase their portion of that through rate to $1.30, and the Canadian application not necessarily be increased 90 cents, but should go before the B.T.C. and say our needs are such and such? Perhaps those would continue on the same rate, perhaps 21 per cent increase or 8 or 10?

MR. SINCLAIR: Maybe I could help you on that point. I was thinking of the point raised by Dr. Angus.

For example, we will take the shipment of lumber

from Vancouver to Boston all by rail. That rate is the same as the rate from Seattle to Boston, all rail. Lumber from Vancouver can go to Boston by Sumas and on to the Great Northern and directly on to the American road in British Columbia. Or, it can go Canadian Pacific until we go down into the United States through Wells River and Newport, Vermont. How then can you establish the answer when the rates from Seattle to Boston and Vancouver to Boston are the same to start with? The lumber can move via the Canadian Pacific all the way across the country, and down through Newport, Wells River, Vermont, or move via Sumas, Washington. We have got to have the route set up to get that traffic through Boston, Maine. But they are not going to allow those rates to stand at a differential below the movement with their American connections, where they might get a longer haul.

COMMISSIONER ANGUS: When you say "they" are not going to allow something, do you mean the Interstate Commerce Commission?

MR. SINCLAIR: No, I mean the Boston and Maine.

MR. COVERT: The Boston and Maine Railway?

MR. SINCLAIR: Yes.

COMMISSIONER INNIS: Did the Board consider on the question of reasonableness the position of the producer? I am thinking of the pulpwood producer. I presume you are being deprived of the market as a result of the increase, and to all intents and purposes it is really a protective device favouring the American producer of pulpwood as against the Canadian producer of pulpwood. Would that argument be listened to by the Board?

MR. SINCLAIR: I would think they would take cognizance of it, but the position of the traffic officers is that the rate is reasonable, and they think the traffic

will move. As to the offer they have made to Mr.Duffy, Mr. Duffy has not tried the rate; he merely says,"I wouldn't think so." But the proof of the pudding is in what happens. The best judgment of the Canadian carriers is that the rate they have proposed will move the traffic. For instance, the Canadian Pacific say, we have a thousand cars in the United States and we want that thousand cars; we would like to move them, and we do not want them left in the United States; they are not creating revenue for the Canadian Pacific. There is that motivation for us to try and get traffic moving off our lines.

COMMISSIONER INNIS: I understand that, but I do not understand the sharp decline which he notes in his brief in the export of pulpwood from the particular constituency with which he is concerned.

MR. SINCLAIR: With great respect to Mr. Duffy, because he certainly has a great deal of knowledge of traffic matters, I think there are many factors involving the use of pulpwood and material of that kind that he has not given proper consideration to. He takes what he thinks is the answer, which is the one he is closest to, and that is the reason why the traffic is falling off. I suggest there may be many other reasons.

MR. COVERT: There have been three briefs submitted to the Commission on this very point.

MR. SINCLAIR: Two of them are by the same company; Mr. Duffy, and this man in Toronto gave the same brief; that is the same company; then the buyer that gave the brief is with the same organization.

MR. COVERT: There is a third one before us which has not been heard yet; it is from some association in the province of Quebec, its name I have forgotten. I point that out because it is a rather striking thing. It was

apparently hitting this industry to a tremendous extent. There may be something else besides the freight rates, as Mr. Sinclair points out. They have all suggested that it is the tremendous increase in freight rates. For that reason I think the Commission would be very much interested in knowing what happens on February 14.

MR. SINCLAIR: We cannot tell. You see, before the war we knew that a lot of wood came into the United States from overseas, Norway and places like that. These sources of supply, because of the war, have dried up; and there was a tremendous expansion in the woodcutting industry in Canada. Also, the paper making industry has changed; there is a fluctuation in trade; and there is the opening up of sea lanes and ocean routes. There are many factors which have an effect on the commercial angle of the movement of pulpwood and wood pulp and paper. We would like to get a good deal of information before the Commission, if we could, but this is a commercial business we are trying to get in behind, and some of it is international. The difficulties are great.

THE CHAIRMAN: We shall now adjourn until 2.30.

---At 1 p.m. the Commission adjourned to meet again at 2.30 p.m.

(Page 14388 follows)

AFTERNOON SESSION

MR. COVERT: The Commission will remember that in dealing with the Alberta Submission, they had put in, I think it was, Volume 6 dealing with the highway transport in Alberta and Mr. Hu Harries, the witness, put the brief in and we undertook, I think, to have him available here for cross-examination for Mr. Sinclair. Mr. Harries, would you take the witness box please?

MR. SINCLAIR: I think I should say, sir and Mr. Covert, that it was on behalf of the railways and the Railway Association of Canada. Mr. O'Donnell was absent at the time so that it was not just cross-examination by myself but also by the Railway Association.

MR. COVERT: I understand that Mr. Hume has some questions. Perhaps you would like him to proceed first?

MR. SINCLAIR: It does not make any difference.

MR. HU HARRIES RECALLED

CROSS-EXAMINATION BY MR. HUME.

Q. Mr. Harries, just one or two questions in connection with the Province of Alberta's brief on Highway Transportation and certain points that arise out of it. I wonder, can you tell us what is the position of your province on the matter of the surrender of control over trucking to a federal authority?

A. I think the Province of Alberta is on record that they will not surrender their constitutional rights in connection with the control of intra-provincial trucking, nor will they co-operate with other provinces to set up uniform truck regulation if such uniform truck regulation provides for rate regulation to which the Province of Alberta

is opposed in principle.

COMMISSIONER INNIS: What is the basis of this attitude?

A. Well, first of all, the Province of Alberta considers that the control of trucking intra-provincially is a constitutional right which it holds and which it will not give up and as far as co-operation with other provinces to set up uniform truck regulation is concerned they are opposed to that because as a matter of principle they are opposed to rate control of trucks.

Q. But there must be something more than just pig-headed constitution?

A. Well, they are opposed to the control of the rates in the truck industry by an administrative body. They won't do it themselves and they won't surrender any power --

Q. You do not know why they take this attitude?

A. They believe that rate control over trucks is not in the interests of the people in the province.

Q. Why is it not in their interests?

A. Because the government of Alberta accepts the position that rate control and the use of a certificate of convenience and necessity, which everyone, I think, agrees must go hand in hand is one way of presenting a government sponsored monopoly into the trucking industry and the Government of Alberta do not see that the benefits that would flow from that would be for the betterment of the shippers in Alberta and the consumers.

Q. Well, does it appear that they might lose a weapon which they could wield against what they regard as a railway monopoly?

A. I think that that is certainly a factor, that the present method of pricing railway services is a consideration.

MR. HUME: If I may follow that along, Mr. Harries, in your brief on Pages 10 and 10-A in the copy I have (I presume it is the same, mine has a blue cover)--

A. Yes, that is the same one.

Q. Reading just from the last paragraph at the bottom of that page dealing with the subject that Dr. Innis has raised, you state:

> "Regulations designed to control the business aspect of highway transport have long been demanded by certain interested groups."

May I ask you what you mean by "interested groups"there?

A. Well, first of all the demand stems from the railways historically and from railway unions and so on and then lately it has come from the highway industry itself.

Q. Then you go on to say:

> "The general appeal of this demand has not been very great. A study of the matter indicates that there are sound reasons for not endorsing general highway transport control."

Turning over then to the next page, Page 10-A, do I understand that the next two paragraphs set out the province's view in answering Dr. Innis' question as to why you do not think that control of rates and so on is in the best interests of the people of your province?

A. Yes.

Q. Perhaps for the sake of anybody following this in the record, I might read the next paragraph:

> "Any legitimate demand for the control of highway transport must proceed from the assumption that unregulated or non-uniformly regulated highway transport markets function unsatisfactorily in terms of economic results. An attendant assumption is that public control

will remedy these undesirable market results.

In appraising the effectiveness of the highway transport market there are two general considerations which must be recognized. The first of these is the matter of the results obtained, between the industry and the shippers; the second is the matter of the results obtained between the trucking industry and other transport agencies."

Does that set out?

A. Yes, that is the basis, as it were.

Q. And then you proceed to deal -- (a) and (b) with those two headings?

A. That is right sir.

COMMISSIONER ANGUS: There seems to be an apparent difficulty of this sort. As I understand it, the complaint is that in Ontario, there being truck competitive rates established by the railways which are said to have diminished railway revenues indirectly and have imposed a burden on railway rates in Alberta, now is it perfectly consistent to take this position in relation to Alberta itself while not in a sense complaining about the results of a similar condition in another province?

A. I think that is a very fair point. Our position has not been and I do not think any where on the record has our position been stated that we are against the railways granting competitive rates in Ontario or for that matter anywhere where there is competition. We believe, and any amendment that we have suggested and the general tone of our brief dealing with competition has suggested that the railways should be free to meet competition and we do not say that that is wrong and we recognize that in some instances it does throw a burden on the non-competitive part of the traffic. But we think that that is a justifiable

burden provided always that the railways do not make rates which are lower than necessary to meet the competition.

Now, I think the attitude of the Province of Alberta has been stated very forcefully in connection with what have been termed "give away rates" and by that we mean rates which are lower than necesssry to meet the competition, but legitimate competition and a legitimate rate to meet it we have certainly made no dissent from that practice at all and we believe that what is good enough for Alberta is good enough for Ontario and we certainly do not ask any difference there.

Q. And you would adhere to that even though there is what one might call "hard cores" which cannot be affected by competition and which, therefore, have to be raised continually to meet the deficiency in railway revenue resulting from competition?

A. The only qualification that we have is a very slight one and that is where, in our general rates brief, we said if there is a very large difference in the earnings between regions in Canada, that then and only then when the difference is significant and you have taken account of all the factors which impinge there, if there is still a significant difference, then you may make a difference in the rates and those are, of course, non-competitive rates, but until you establish that we are quite content to have equality in the standard non-competitive rates -- yes sir.

MR. HUME: Am I correct, Mr. Harries, that the Province of Alberta -- By the way, let me state that I recognize that you are in the box this afternoon without benefit of your counsel who is engaged elsewhere and if there is any question that I ask that you would prefer not to answer by reason of the fact that your counsel is not here, I want you to say so.

A. Thank you.

MR. COVERT: Incidentally Mr. Frawley asked me to inform the Commission that he was unable to be here due to a commitment before the Board of Transport Commissioners and wanted to assure this Commission that there was no disrespect to the Commission, that he just cannot be in two places at once and he had been on this case originally before we had re-assembled.

MR. HUME: I wanted to ask you about these meetings that this Commission has heard about that take place between the four Western Provinces with relation to the matter of truck transport. Do you have personal knowledge of those meetings?

A. I have read some of the minutes from the meetings and I have discussed them with the secretary of the Highway Transport Board in Alberta, so I have some idea of them.

Q. Then, would it be correct for me to say that they are meetings, voluntary gatherings of the officials from the four western provinces to discuss the matter of truck transportation in Western Canada?

A. Matters which are of mutual interest -- yes.

Q. Then, I presume you deal with matters of safety and length of vehicles and weight and so on?

A. Yes, and the lights that are required and things like that -- certainly.

Q. And I also understand from the evidence or the submissions that have been presented here that Alberta does not altogether agree with the views of some of its neighbours as to other matters and those matters are not dealt with at these meetings?

A. When those matters come up Alberta does not take part in the discussion, that is right.

Q. Are those meetings held annually or are they more frequent?

A. Annually, I believe, in October of every year, as far as I know.

Q. Well then, the next thing I wanted to ask you about, Mr. Harries, is this matter that has been discussed and upon which certain statements were read into the record in connection with the movement of freight by highway into your Province from the United States. I wanted to ask you whether or not the Government of Alberta is in favour of some amendment to the customs regulations to permit the movement of this freight into bonded warehouses within the province as opposed to the present situation where they have to be cleared at the border. I think you know what I mean?

A. I think I can say yes to that but I would ask to have that statement answered by Mr. Frawley definitely. I think that would be the best way.

Q. Now, I wonder if you can give me an answer to this question. We heard quite a bit this morning about agreed charges and I wondered whether or not you knew whether the commercial truckers in your province have made agreements with shippers, a clause in which said that the shipper was not to ship by any other means of transportation?

A. I can only say that Mr. Taylor, the Secretary of the Alberta Motor Transport Association has told me that they never make agreements with that clause in the agreement. That is the only source of information I would have in that matter.

Q. And then may I ask you whether or not you know if your province has any official view as to this question of the purchase by railways of trucking concerns in the province?

A. I do not want to give the Commission the impression that I know what Mr. Hume is going to ask me and that I am reading the answers, but I happen to have a memo here from Mr. Frawley which deals with these three points. He has already touched on one and the other one was and I am reading from the memo:

"The Government of Alberta will not grant licences to any truck company, the ownership of which has passed to a railway over and above the number of licences which such company had at the date of its acquisition by the railway company."

and that is the policy of the Government.

MR. COVERT: Would you read back that answer?

A. May I read it:

"The Government of Alberta will not grant licences to any truck company, the ownership of which has passed to a railway over and above the number of licences which such company had at the date of its acquisition by the railway company."

And I might say in addition, that aside from the acquisition of companies by the railways, licences to the Canadian Pacific Express, for instance, it is their policy not to grant any more to that company than they had at some particular date.

COMMISSIONER ANGUS: Is there anything to prevent the railway companies in the future acquiring a truck company with its licences?

A. No sir, there is not.

MR. HUME: Do I understand you correctly then in answer to that question, that a railway company in the future could buy a trucking concern out and receive licences for the number of vehicles at the time they bought it out?

A. My understanding is yes.

Q. But that the present companies owned by railways in your province would not receive any additional licences?

A. That is correct.

Q. But by "licences" do you mean any additional vehicles?

A. Any additional vehicles, yes.

Q. That is, if a company had 25 vehicles, that is the number with which they are fixed?

A. That is correct.

(Page 14400 follows)

Q. But they could buy in 1951, for example, another company with ten vehicles?

A. That is my understanding, yes.

Q. One last thing, Mr. Harries. I think this matter has been dealt with in the fall or winter, and there was some suggestion, as I recall it, by the Railway Association of Canada, that in the various provinces the users of the highway, and particularly the truck transport, were not paying their way. There has been evidence admitted from time to time, or submissions about that matter, and I wondered whether or not you could tell us what the view of Alberta is on that question of the truck and highway costs?

A. Well, I don't think the government has expressed a view on that, whether they are of the opinion that the trucks pay their way or not, I don't think they have expressed a view.

Q. Thank you very much.

COMMISSIONER INNIS: Is there any definition of ownership? Would 49% of the stock be ownership?

A. I don't know how that is determined, sir.

Q. You have not any details?

A. No, I don't know what constitutes ownership.

CROSS EXAMINED BY MR. SINCLAIR:

Q. I have very few questions. In answer to Mr. Hume, Mr. Harries, I think you said that the information that you acquired from the Automotive Transportation Association, Alberta Branch, was that there was no agreement entered into by truckers in Alberta with the clause that the shipper would not

use any alternative transport. Is that correct?

A. I forget whether it was "would" or "could".

Q. With a clause that said - well, what was the information that you ascertained from Mr. Jack Taylor?

A. That they could not, that there was no clause they said they could not use other means of transport.

Q. Did you ask him whether they never got contracts that said that the shipper would give him a certain percentage of the total traffic?

A. No, I don't believe I did.

Q. That would have been more material.

A. If I had anticipated your question, yes, it would.

Q. That is the way you control it, or work, "that you give me 90% of your traffic". Would you ascertain from Mr. Taylor whether there are any contracts in Alberta between truckers and shippers that have it as a term that the shipper will use truck transport for a certain specified percentage of the total traffic?

A. I would be very glad to.

Q. You might also (I think it would be helpful) ask Mr. Taylor how he ascertains how many agreements there are or what the terms of the agreements are when there is no provision in the legislation requiring them to be filed with any regulatory tribunal. Would you ask him that?

A. I would be very glad to do that, yes.

Q. Now, in answer to Dr. Angus, I think you said that the position of Alberta was not against the railways granting competitive rates but where it was necessary to meet competition; that Alberta was against the railways giving what you termed give-away rates. Have you got any examples of those so-called give-away rates that you talk about?

A. I think I said, Mr. Sinclair, that Alberta had expressed herself a number of times about the give-away rates, that is, in other proceedings, in the 30 Percent. Case particularly. I remember our counsel talking about that.

Q. Since that time, as you know, Mr. Harries, the railways have gone over their rate structure, and are continually going over it, and if a give-away rate is a non-compensatory rate, as you know, and the railways - -

A. It is not necessarily a non-compensatory rate in my idea of it, Mr. Sinclair.

Q. It is not?

A. No.

Q. Well, a rate lower than necessary to secure the traffic?

A. That is right.

Q. Well, every give-away rate is a non-compensatory rate in your definition?

A. Yes, that is correct.

Q. What examples have Alberta, or have they any, of non-compensatory rates in the rate structure of Canadian railways?

A. I was pointing out, Mr. Sinclair, that

that was the position that we had taken in the 30 Percent. Case.

Q. You are not taking that position now?

A. Well, we take it as a matter of principle, but I would not be able to point out today any give-away rates that the railways have.

Q. Well, I suggest one is the movement of Alberta coal to Ontario points, and Alberta gets that continuing in effect?

A. You mean that you want me to say that that is a give-away rate?

Q. It is lower than out-of-pocket costs of carrying the traffic?

A. I have not studied it to find out whether it is or not.

Q. Assuming it is, would Alberta think it should be raised?

A. I don't know. If we assume it is non-compensatory you mean? We are on the record as saying that all rates should be compensatory certainly, but I don't accept your assumption that it is, of course, Mr. Sinclair.

Q. If it is you do think it should be raised?

A. Certainly.

Q. Your answer to that is certainly?

A. Certainly.

Q. Now, when you are dealing with the question of regulation of media of transport in your Brief, you say that your study has shown that regulation of highway transport is not necessary in Alberta.

A. I am sorry Mr. Sinclair, but what is the page reference on that?

Q. I am reading around Page 14, top of Page 15, and that was one of the parts you referred to in your answer to Mr. Hume.

> "Our contention is that the real danger lies in the formation of either private or government sponsored monopolistic control of the highway transport industry".

It is the end of that paragraph.

A. Yes.

Q. Now, what is your test for whether regulation of the highway transport media is or is not necessary.?

A. Well, I think you have to determine whether or not the shippers find that the present service is unsatisfactory. The people who say that the rates of highway transport should be regulated usually give a number of reasons for suggesting that. We examined the situation in Alberta to some extent and found that in the case of the shippers that we contacted those things were not a problem in Alberta.

Q. Would you suggest that a rate should be given to one person one day for the movement of goods and that for the movement of the same goods between the same points later that day a different rate be given to another person? Would you say that that would not necessitate some regulation? I think I can help you by maybe recalling to you, Mr. Harries, the evidence in Calgary of one of the grocery trades talking about shipments by truck. I think he said, as I recollect,

that he wanted to make the best deal he could with the traffic at the time, he wanted to ship the trucks irrespective of what his neighbor was making or his competitors. Do you think that shows any need for regulation?

A. Well, I don't think that is a general problem in Alberta.

Q. You don't?

A. No.

Q. Did you find any of those circumstances in your investigation?

A. We found that the people we talked to, the majority of them thought that what we could call personal discrimination in rates was not affected.

Q. Would the fact of monopoly be the real test of whether regulation was or was not necessary in the view of Alberta, Mr. Harries?

A. I am afraid, Mr. Sinclair, I don't quite understand your question.

Q. Well, is the basis for the need for regulation the fact that there is a monopoly control?

A. No, the basis I think for regulation is, that, as we stated in that part that Mr. Hume referred to at the top of page 10A, simply that the transport markets do not function satisfactorily in terms of economic results.

Q. That means, does it not, Mr. Harries, that demand has not got an effect on price, that is all that means, does it not?

A. No, it could not mean -

Q. It does not mean that at all?

A. No.

Q. What does it mean? I suggested where the need for regulation, as you put it on page 10, meant that the effect of competition did not have some control over the price of the service. That is what this first sentence really meant?

A. That the effect of competition did not have some control on the price?

Q. You said that is not what it meant, and I asked you what did it mean?

A. I am sorry, Mr. Sinclair, I understood you to say that you had regulation because there was monopoly, that was the original premise. I said, no, you have regulation because the market does not function satisfactorily in terms of economic results. That may be due not only to monopoly, but there may be too much competition in it or the size of the units may be too big, or any one of a number of similar reasons. That was what I had in mind, sir.

Q. So that you would not agree that where there was competition as to transportation services, that the need for regulation was no longer necessary.

(Page 14408 follows)

A. Oh, no, generally I would agree with that.

Q. You would agree?

A. Oh, yes.

Q. I think you have in Alberta more commercial trucks per capita than they have in any other province in Canada?

A. I am not sure. The distances are very great in Alberta.

Q. That is not the question I asked you. Have you made any inquiry as to the number of commercial trucks per capita in Alberta?

A. No.

Q. As compared to the other provinces?

A. No, I have not.

Q. I think that in Alberta you have 8661 commercial trucks handling goods for hire in the 1948-49 licence year, as shown on page 3 of your brief?

A. Yes, unless there is a change in the errata. No, that is right.

Q. And the result of your research, I take it, was that the regulation of trucking as carried on in Alberta was satisfactory because the results were that effective competition was being given in the trucking industry?

A. The results were that the people were getting the services, and the prices were what we call reasonable. That is all.

Q. Did that result from competition, or was it due to the fact that the people of Alberta operated them?

A. Competition? You say it was due to competition alone? It was due, probably in a measure in a major part to competition.

Q. What was the other part?

A. That the people in Alberta function that way. I do not know.

Q. Did your investigation show that truck competition in Alberta was effective as against rail transport?

A. We did not investigate that particular aspect of it, but I would say yes, generally, it is.

Q. You would agree, would you not, and your research would likely have given you this answer: that truck competition in Alberta is greater today than at any time previously?

A. I have not studied that and I could not tell you. However, my guess would be yes.

Q. You did not go into it?

A. No.

Q. Did you go into the number of licences issued, let us say, to commercial vehicles in 1939?

A. I have it listed here, I think, at page 19.

Q. That shows a very marked increase, does it not?

A. Yes, it certainly does.

Q. Would it be correct to say that there was more highway competition today than previously?

A. Oh, yes.

Q. So,in so far as railways are concerned in Alberta, they are not holding a monopolistic position on the movement of many goods, are they?

A. Not where you can have effective truck competition for the carriage of goods, no.

Q. So you would agree that flexibility is required in railway rate making to enable it to meet competition?

A. I think a certain flexibility is very desirable.

THE CHAIRMAN: Q. What is that? Please speak up.

A. I think a certain flexibility is very desirable.

MR. SINCLAIR: Q. What is that qualification in the word "certain", in there?

A. I do not think it should be completely flexible; I think it should be flexible to the extent that Alberta has indicated in her suggestions in connection with control of competitive rates by the Board of Transport Commissioners.

Q. And that would apply, would it not, even though there was a completely effective competition in the carriage of those goods by truck?

A. Oh, most certainly.

Q. And at the same time, you put forth the proposition -- and I want to be clear on this -- that where there is competition there is no necessity to have regulations to protect the consumer from abuses of service or price?

A. That is quite correct.

MR. SINCLAIR: That is all.

THE CHAIRMAN: Q. What is that you want to say?

A. I just wanted to point out, in case I did not make myself quite clear to Mr. Sinclair, that the essential difference that we see between trucks and railways is that the trucks, on their movements, are competitive; and the railway, you have only part of it competitive and part of it is still monopolistic in the sense that it must be carried by the railway, that is, the long haul and the heavy goods must be taken by the railway, so there is no competition there. When you say there is competition with the railways in the carriage of certain goods, you cannot immediately say there should not be any regulation required there, because of the fact that the railway is concerned with

both types, and you cannot let one type compete with the other. And it is quite conceivable that if you did not have control of competitive rates, they could conduct themselves in any manner they wished and recoup any losses they suffer by increasing the rate in the monopoly part of it. So I say that when or where there is competition you do not need control --

MR. SINCLAIR: Q. We will argue that point.

A. I just want to make myself clear.

CROSS-EXAMINATION BY MR. FRIEL:

MR. FRIEL: Q. Can you tell me when the position of Alberta crystallized in respect to this regulation of rates on trucking? Is it something of an un-announced nature which has been in effect for some years, or do you know?

THE CHAIRMAN: Would you mind repeating your question, Mr. Friel?

MR. FRIEL: I asked him when the decision of Alberta crystallized with respect to this rate regulation and when they adopted a firm stand and announced it publicly.

THE CHAIRMAN: The Alberta government did that?

MR. FRIEL: Q. The Alberta Government has taken the stand in its submission?

A. I think, as a matter of fact, Mr. Friel, that there was an Act put in in 1936, and that Act made it possible, with an order in council, as I believe the present one does, to control rates; and they made some preliminary investigation looking to the control of truck rates; and it met such a storm of protest from the people in Alberta that they decided that they would not control rates, and that since that time their

position has been quite consistent.

Q. What year would that be?

A. I would say 1936 or 1937.

Q. Actually the province of Alberta was opposed to discrimination of any kind in any field of transportation, be it personal or regional discrimination?

A. Yes.

Q. And if you found such a situation in the trucking industry in Alberta, you would be prepared to revise your views, would you not?

A. I think it would be logical, yes.

MR. FRIEL: That is all.

MR. COVERT: I just have two questions. One is in connection with section 29, subsection 2, of the Public Service Vehicles Act, which provides that any trucker or operator of a public vehicle shall not refuse to carry the commodities which are stated in the owner's certificate if the same are offered in a proper condition, unless at the time the public vehicle is loaded to capacity, or, owing to climatic conditions, the property to be carried would perish in transport.

THE CHAIRMAN: What section is that?

MR. COVERT: It is section 29, subsection 2, of the Public Service Vehicles Act of Alberta. It is appendix D of the brief, and it is at page 11.

MR. SINCLAIR: That is section 32, subsection 2.

MR. COEERT: No, it is section 29, subsection 2, in my book.

THE CHAIRMAN: It is under the heading of "Prohibitions".

MR. COVERT: I think you must be looking at the wrong Act, Mr. Sinclair.

MR. SINCLAIR: I am sorry.

MR. COVERT: Q. Now, is that enforced by your regulatory body?

A. I asked the secretary of the Board about that provision, sir, and he said that there had never been any convictions under it. In fact, he said that during the time he had been there, which I think was about four years, they had only had something like four or five complaints, and these had been investigated. In one case they issued a warning that the licence would be cancelled if the operator continued to violate this section; and in the other cases they got the matter straightened out between the shipper and the driver. They have about fourteen inspectors in Alberta who go around checking in connection with this Act, and that is the way they use those inspectors, to check up on things like this; and there would not be a prosecution, but there would be a conversation, probably, between the inspector and the man who was complaining; and they could get the trouble straightened out in that fashion.

(Page 14418 follows)

Q. The next point I wish to ask you is, is it fair to say that the position of Alberta really is -- and I think you so intimated in your brief -- that you have an excessive capacity of tracks at certain seasons at least?

THE CHAIRMAN: Did you say an excess of trains?

MR. COVERT: No, my lord, an excess of capacity.

Q. You believe that keeps the rates down, isn't that right?

A. Oh, yes, it definitely does.

Q. And in turn that provides at least some measure of competition to the railways and may tend to keep rates down?

A. Yes.

Q. And that is a situation which Alberta desires?

A. Yes.

Q. And that is the reason that you say you will not surrender your control over interprovincial tracking, and will not co-operate with other provinces in any rate making regulation?

A. That is correct, sir, yes.

Q. One other point. I understood you to say that, but I wasn't quite sure whether it was a law, a regulation or simply the practice, concerning this refusal on the part of the Board to grant any further licences to companies which had been taken over by the railways? Was that just a practice?

A. It is a practice, yes.

Q. There is no law or no order in council providing for it?

A. No, there isn't.

Q. That, you say, also applies to even companies like the Canadian Pacific Express?

A. Yes, it applies to them. I think that was put

in about 1945, and then when the C.P.R. bought Dench, or got control of Dench, they broadened it.

Q. You do require this certificate of necessity and convenience in your province?

A. No.

Q. You do not require that at all?

A. No.

Q. Then is Section 3 of your Act not in force at all?

THE CHAIRMAN: That is the Vehicle Act?

MR. COVERT: Yes, the Public Vehicles Act.

THE WITNESS: Oh, no; I am sorry, I misunderstood you, Mr. Covert. I thought you said certificates of convenience and necessity.

MR. COVERT: Q. Yes, what is this?

A. This is just a certificate to register the vehicle and so on.

Q. Perhaps I have the wrong section. Is that under Section 3, the ordinary permit licence?

A. Except the buses have another -- there is a licence and a certificate, but I am not sure that I have it absolutely straight in my mind, Mr. Covert. Yes, that is the one certificate, and then there is a permit to operate over specific routes, but I can't find that in the Act at the moment.

Q. I think perhaps that is subsection 14: "The Board may prescribe a route as the only route . . ."

A. Yes.

Q. Any others then can get a certificate under Section 3?

A. Provided that they fulfil the requirements in connection with insurance, and that their vehicle is in shape and so on, yes, sir.

Q. I think that is all, Mr. Harries.

MR. COVERT: Mr. Chairman, the next part of the submission of the Province of Alberta is that dealing with the Canadian National capital structure and accounting methods.

THE CHAIRMAN: I beg your pardon. Will you start again?

MR. COVERT: The rest of the submission on the part of Alberta is that dealing with the Canadian National capital structure, the accounting methods and statistical procedure, and Canadian Pacific-Canadian National co-operation. I think the brief is to be taken as read into the record.

This Submission of the Province of Alberta will confine itself to Sub-paragraphs (c), (d) and (e) of Paragraph 2 of the Order-in-Council constituting the Commission and setting out its Terms of Reference, namely P.C. 6033 of 29th December, 1948.

As the Submission develops, it will be seen that in large part the position which Alberta must take at this time is that until the Commission and the Provinces have received the extended Submissions of the Canadian Pacific Railway Company and the Canadian National Railway Company, and until there has been an opportunity of examining the pertinent studies made by the Commission's technical advisers our submissions at this time cannot be presented except in a very general fashion and we must respectfully reserve the right to make extended representations at a later time.

I

CANADIAN NATIONAL CAPITAL STRUCTURE

Sub-paragraph (c) of Paragraph 2 reads as follows:

"(c) Review the capital structure of the Canadian National Railway Company and report on the advisability, (or otherwise), of establishing and maintaining the fixed charges of that Company on a basis comparable to other major railways in North America."

Paragraph 19 of the Outline of Submissions to be presented by the Canadian National Railway Company points out that the financial difficulties of that Company do not arise in their entirety from over capitalization but also from the operation of railway lines which can bear no fixed charges and as a result place an excessive burden on the company's remunerative lines.

Paragraph 24 of the Outline calls to the attention of the Commission the fact that in 1923 the Canadian National was required to assume without mitigation the debts of its bankrupt predecessor corporations and further observes that the assumption of such heavy debts is the principal underlying cause of the present excessive fixed charge burden of the Canadian National.

Paragraph 25 contains the suggestion that while the total capital of the Canadian National need not be reduced, nevertheless in the view of the Canadian National management an adjustment is required between the portion of total capital represented by interest charge debt and the portion represented by equity capital.

The Province of Alberta is of the view that the matters called to the attention of the Commission by the Canadian National in the foregoing paragraphs of its Outline Brief are matters of particular importance to the Commission in connection with the direction to it contained in sub-paragraph (c) of Paragraph 2. In our submission the sub-paragraph must be given a broad interpretation by the Commission and must be deemed to include a direction not only to review the capital structure of the Canadian National but to investigate the operating results of what the Canadian National itself, in its Outline Brief, terms "railway lines which can bear no fixed charges."

In our Submission a review wholly limited to the existing capital structure of the Canadian National and not extending to an examination of the operating results of those parts of the Canadian National system which must be regarded as unremunerative lines would fall far short of furnishing the Commission with the data necessary to enable it to make effective recommendations with respect to the financial future of the Railway.

The Canadian National Railway Company is in the very best position to make a comprehensive submission with regard to this particular phase of the Commission's investigations and it is to be assumed that such comprehensive submission will be made in elaboration of the observations contained in summary form in its Outline Submission.

The Province of Alberta, not having access to the records of the Canadian National Railway Company so as to enable it to make a complete submission on these matters at this time, respectfully reserves the right to make an extended submission concerning the capitalization of the Canadian National Railway Company and concerning matters properly allied to it after there has been an opportunity to examine the submissions made in that regard by the Canadian National Railway Company.

II

ACCOUNTING METHODS AND STATISTICAL PROCEDURES

Sub-paragraph (d) of Paragraph 2 of P.C. 6033 reads as follows:

> "(d) Review the present-day accounting methods and statistical procedure of railways in Canada, and report upon the advisability of adopting, (or otherwise), measures conducive to uniformity in such matters, and upon other related problems such as depreciation accounting, the segregation of assets, revenues and other incomes, etc., as between railway and non-railway items."

There will be a detailed submission by the Province of Manitoba with respect to depreciation accounting and by the Province of Saskatchewan with respect to maintenance charges. Alberta endorses and supports those submissions.

The purpose of this submission is to advance certain general observations and recommendations regarding uniformity of accounting and regarding depreciation accounting and further to make a rather more particular submission regarding the "segregation of assets, revenues and other incomes, etc. as between railway and non-railway items."

The importance of uniformity or standardized accounting in industry long has been recognized and has been adopted by various industries and other organizations with a view to making comparisons of results truly comparable. Such standardization deals with the asset and liability accounts of the industries and also with the accounts showing the results of the annual operations.

In the United States a "Uniform System of Accounts for Steam Railroads", commonly known as "Accounting Classifications", has been prescribed by the Interstate Commerce Commission in accordance with Section 20 of the Interstate Commerce Act. The Association of American Railroads has published a consolidation of such accounting classifications as of 1st January, 1943.

For many years there have been Interstate Commerce Commission rules regarding the separation of operating expenses, etc., between freight service and passenger service on large Steam Railways and

a brochure in this connection was issued effective 1st January, 1936 (1)

In March, 1943, the Senate of the United States passed a resolution:

> "That the Interstate Commerce Commission be requested to file with the Senate as soon as practicable such of the studies of its cost finding experts as may now be suitable for publication in documentary form and that when so filed such material be published and disseminated as a Senate Document or Documents."

In June of 1943 the Chairman of the Interstate Commerce Commission transmitted to the President of the Senate, in response to the foregoing resolution, a manuscript entitled "Rail Freight Service Costs in the various Rate Territories of the United States." This manuscript is officially known as Senate Document No. 63.

It will therefore be appreciated that the matter of uniformity of accounting is essential if at any time it is necessary or desirable to compare the results of the railroads of Canada. The Province of Alberta submits that your Commission should recommend that a standardized system of accounting be adopted by the railways of Canada.

By way of illustration, we might refer to the general instructions given to United States railroads for the uniform system of accounts relating to road and equipment. Those instructions state:

> "The Carriers records shall be kept with sufficient particularity to show fully the facts pertaining to all entries made in the accounts provided herein for investment in road and equipment. Where the full information is not recorded in the general books, the entries therein shall be supported by other records in which the full details shall be shown. Such general book entries shall contain sufficient reference to the detail records to permit ready identification, and the detail records shall be filed in such manner as to be readily accessible for examination by representatives of the Interstate Commerce Commission." (2)

The general instructions regarding the operating revenues and expenses contain similar provisions (3).

(1) Rules Governing the Separation of Operating Expenses, Railway Taxes, Equipment Rents, and Joint Facility Rents between Freight Service and Passenger Service on Large Steam Railways Revised Issue, 1st January, 1936; United States Government Printing Office, Washington: 1936.

(2) Accounting Classification, p. 9

(3) ibid p. 53

Special instructions are also laid down with regard to the income accounts (1); to the profit and loss accounts (2); and to the balance sheet accounts(3).

The statistical information necessary for the preparation of uniform accounting is also outlined in detail and rules and definitions of the various classifications are fully enumerated. (4)

The emphasis in the brochures which have been issued is on the necessity for uniform accounting for the general information of the Interstate Commerce Commission and in some cases for the particular purpose of ratemaking. See Senate Document No. 63, page 1.

Paragraph 56 of the Outline Submission of the Canadian Pacific Railway dealing with the matter of uniformity of accounts states:

> "There is already a substantial degree of uniformity in accounting methods and statistical procedure as between Canadian National and Canadian Pacific. Both companies adhere closely to the accounting classification of the Interstate Commerce Commission. As provided for in the Railway Act and in the Statistics Act, the railways in Canada submit annual reports, on prescribed forms, to the Board of Transport Commissioners and the Dominion Bureau of Statistics, furnishing details of their accounts and statistics of their operations. Many periodic and other reports are also submitted to the Board and to the Bureau."

Paragraph 57 in the Canadian Pacific Outline Brief states:

> "whatever the degree of uniformity in accounting matters, fundamental differences between Canadian National and Canadian Pacific prevent exact comparisons being made. Three important general considerations limit the comparability of the two roads, i.e., differences in physical development and characteristics; differences in organization; and differences in policy arising from one company being a government-owned enterprise and the other privately-owned."

The Brief then states in Paragraph 58 that the significant variation in accounting practices between the two railroads is in regard to depreciation practices. Depreciation will be dealt with later in the submission.

(1) ibid p. 177
(2) ibid p. 199
(3) ibid p. 207
(4) ibid p. 249

Paragraphs 65 and 66 of the Outline Brief of the Canadian Pacific deal with the matter of segregation of operations between rail and non-rail enterprises. This matter is also dealt with later in this submission.

The main purpose of uniform or standardized accounting is that the financial statements of the operator may be clearly understood by those who for any reason are interested in the results. At the present time the taxation statutes of Canada require that the income of a company be properly determined and to that end the accounts of all taxpayers are under close scrutiny by the taxation division of the Department of National Revenue. In like manner, in the case of railways, the Board of Transport Commissioners, and on occasion the representatives of the rate paying public are required or entitled to know that the financial statements represent the operating results on a uniform basis. It is not here suggested that such uniform results are necessarily used for the purpose of determining freight rates or passenger rates. The object of stressing the necessity for a uniform classification of accounts is that the financial statements may truly reflect the correct operating conditions and the financial position generally.

In the Submission of the Province of Alberta there is definite need for the prescription of uniform accounts by the regulatory body, i.e., the Board of Transport Commissioners, and for the continuous supervision of those accounts by the regulatory body. In our submission, therefore, the Commission should recommend that the Board of Transport Commissioners be empowered by statute to promulgate a uniform system of accounts for Steam Railways in Canada, generally along the lines of the accounting classifications prescribed for United States railroads by the Interstate Commerce Commission. In our submission the differences which the Canadian Pacific in its Outline Brief calls to the attention of the Commission should not be regarded as being sufficiently important to prevent the

inauguration and functioning of a uniform system of accounts.

We respectfully request and reserve the right to make further representations in the matter of the necessity for uniform accounting and the nature of such uniformity until we have had an opportunity of examining any studies concerning these questions which may have been undertaken by the accounting advisers to the Commission.

Depreciation Accounting

An extended Submission is being made by the Province of Manitoba with regard to depreciation accounting and we associate ourselves with the views expressed therein.

During the recent rate hearings before the Board of Transport Commissioners much evidence was led both by the railways and the protesting Provinces on the subject of depreciation and the method of determining the amount of the annual charges for depreciation which should be allowed to the railways.

The evidence before the Transport Board disclosed that in the main, all steam railways other than the Canadian Pacific used straight line depreciation as the method of recording wastage of assets. Considerable evidence was put forward by the Canadian Pacific to support the method which that company employs in respect of its rolling stock and depreciable road, namely the user method. The submission of the Province of Alberta is that the straight line method of depreciation should be adopted because it accurately reflects the annual depreciation if the lifetime of the asset is correctly estimated and it is a method relatively simple to administer. On the other hand, it is agreed that the user method of depreciation has merit where the incidence of use fluctuates as it does in railway operations. Should, however, the user method be recommended for adoption in Canada we would stress the need of the regulatory authority setting forth definite requirements concerning the information necessary to be supplied in order to determine the basic rate. In passing it should be pointed out that this vital informa-

tion, urgently requested by the Provinces, was not volunteered by the Canadian Pacific in the recent rate proceedings and was not ordered to be produced.

There have been different systems of depreciation accounting in the Canadian railways for many years and continuing to the present. As in the case of uniformity of accounts, it is our submission that uniformity in the matter of calculating depreciation by railways in respect of the use of their assets, whether by the straight line, user or any other method, should be prescribed by the regulatory body.

Segregation of Accounts - Rail and Non rail

In the so called 30% Case before the Board of Transport Commissioners, considerable argument took place as to whether or not the "Other Income" of the Canadian Pacific should be taken into account in determining the financial need of the Company. The Chief Commissioner, in delivering the majority judgment of the Board, 38 J. O. R. & R. 1, stated at page 19:

> "It seems to me that neither the profits nor the losses on other outside investments should be taken into account in fixing just and reasonable transportation rates."

Associated with the question of Other Income was the matter of the distribution of Fixed Charges, Dividends and Surplus. The protesting Provinces submitted that if Other Income were not to be taken into account in the determination of financial need, then the Board should require the Canadian Pacific to properly apportion its financial requirements of Fixed Charges, Dividends and Surplus between rail and non-rail activities.

In the judgment of the Board at page 25, the Chief Commissioner says:

> "It may be that some part of the fixed charges of the Canadian Pacific are attributable to non transportation enterprises, but because of the close relationship of railway transportation and other enterprises of the Company I have not been able to calculate with any degree of satisfaction what the amount, if any, may be."

Dealing with the question of Dividends the Chief Commissioner said at page 25:

> "The comments which I have made above in respect to fixed charges apply equally to the question of dividends of the Canadian Pacific."

The need for such a segregation was appreciated by Mr. Commissioner MacPherson in his separate judgment when he stated at page 86:

> "In dealing with Other Income I wish to draw attention to one point in connection with the way in which the Canadian Pacific Railway presented these accounts. I agree that in determining what are just and reasonable rates the income derived from other sources than railway operations should not be taken into consideration, but if that view is correct I think the accounts should be prepared accordingly, i.e., that assets and income should be segregated and separate Balance Sheets and Profit and Loss accounts presented to the Board on any future applications."

There was considerable discussion and argument before the Board as to what properly constituted rail assets and rail liabilities and rail operations, on the one hand, and what truly constituted non-rail assets and liabilities and non rail operations on the other hand. Instances of what appeared to be inconsistent treatment by the Canadian Pacific were presented to the Board.

Further, it was not determined into which category the following operations respectively fell:

a. Hotels

b. Steamships

c. Communications

d. Express

e. Investment in Other Railway Enterprises

The Provinces appealed the adverse judgment of the Transport Board to the Governor General in Council and the decision of that body is to be found in P. C. 4678 of 12th October, 1948. By its judgment the Governor General in Council directed that the financial operations of the Canadian Pacific should be re-considered by the Board in the light of the representations made by the Provinces that there must be apportionment between rail and non-rail of those charges which are common to rail and non-rail. These

proceedings are still before the Board.

In the main, Alberta adopts the views expressed by Mr. Commissioner McPherson, supra. We further submit however, that by statutory provision the Transport Board should be authorized and directed to:

(1) make a segregation of rail and non-rail activities of each carrier;

(2) require the carriers to keep their respective accounts accordingly;

(3) require the railways to properly apportion between rail and non-rail all charges which are common to rail and non-rail operations;

(4) require the railways to submit their financial statements in accordance with such segregation.

CANADIAN PACIFIC - CANADIAN NATIONAL CO-OPERATION

Sub-paragraph (e) of Paragraph 2 of the Commission's Terms of Reference reads as follows:

> "(e) Review and report on the results achieved under the Canadian National-Canadian Pacific Act, 1933, and amendments thereto, making such recommendations as the present situation warrants."

The Province of Alberta supports and endorses the Submission made by the Province of Nova Scotia in this matter.

Throughout the regional hearings statements were made with respect to the position taken by the protesting Provinces before the Board of Transport Commissioners in the so-called 30% Case concerning the matter of Canadian National-Canadian Pacific co-operation. While the controversy in this respect between the Provinces and the Railways during the Rate Hearings are not germane to the enquiries being conducted by this Commission, nevertheless, it might serve a purpose to briefly state the distinction between the views put forward in the rate hearings concerning the Canadian National-Canadian Pacific Act, 1933, and the situation respecting that statute which now exists by virtue of the express provisions of sub-paragraph (e) of paragraph 2 of P. C. 6033.

Before the Board of Transport Commissioners the Provinces took the position that in view of the fact that the railways had come to the Board pleading dire financial need, the onus was clearly upon the railways to satisfy the Board that every possible money-saving co-operative agreement between the railways had been carried out or was under active investigation and that until such onus had been satisfied, the railways plea of dire financial need was untenable.

The imperfections contained in the Canadian National-Canadian Pacific Act, 1933 and the limited authority and function of the Board of Trasport Commissioners thereunder were not under review by the Board in the rate cases In that regard attention might be called to the observations of the Chief Commissioner in delivering the judgment of the majority of the Board in 38 J. O. R. & R., at p. 40.

On the other hand this Commission is specifically directed by the Governor General-in-Council to review and report upon the results achieved under the Canadian National-Canadian Pacific Act, 1933, and to make such recommendations as the present situation warrants. The entire matter not only of the statute itself, but of the co-operation so far achieved or which might be achieved by the two principal railways, is therefore, properly before the Commission for investigation and report.

All of which is respectfully submitted.

MR. COVERT: I understand, Mr. Chairman, that Mr. Frawley has a witness with respect to this brief, but he is with him now before the Board of Transport Commissioners and is not available to us.

THE CHAIRMAN: Can you go on with something else?

MR. SINCLAIR: Mr. Morrison could be called.

MR. COVERT: Would you people like to cross-examine him?

MR. SINCLAIR: Yes, we would like Mr. Morrison called in support of the brief of Alberta.

MR. COVERT: Mr. Chairman, may we adjourn for ten or fifteen minutes, and Mr. Morrison might then be able to appear.

THE CHAIRMAN: If you cannot go on with the Alberta brief, can you proceed with something else?

MR. COVERT: Not this afternoon, Mr. Chairman.

MR. CHAIRMAN: Do the best you can.

---Recess.

The Commission adjourned at 3.25 p.m.
to meet again to-morrow, Wednesday,
February 8, 1950, at 10.30 a.m.

A.R.

Canada

ROYAL COMMISSION
ON
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ROYAL COMMISSION ON TRANSPORTATION

OTTAWA, ONTARIO,
WEDNESDAY,
FEBRUARY 8, 1950.

THE HONOURABLE W.F.A. TURGEON, K.C., LL.D. - CHAIRMAN

HAROLD ADAMS INNIS - - COMMISSIONER

HENRY FORBES ANGUS - - COMMISSIONER

G. R. Hunter,
Secretary.

P. L. Belcourt,
Asst. Secretary.

COUNSEL APPEARING:

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Hugh E. O'Donnell, K.C. H. C. Friel, K.C.	Canadian National Railways
F. C. S. Evans, K.C. I. D. Sinclair	Canadian Pacific Railway
C. D. Shepard	Province of Manitoba
M. A. MacPherson, K.C.	Province of Saskatchewan
J. J. Frawley, K.C.	Province of Alberta
F. D. Smith, K.C.	Province of Nova Scotia; Transportation Commission of the Maritime Board of Trade.
J. Paul Barry	Province of New Brunswick
F. R. Hume M. L. Rapoport	Canadian Automotive Transportation Association

WEDNESDAY, FEBRUARY 8, 1950

MORNING SESSION

THE CHAIRMAN: Mr. Frawley, I believe we are to hear from you.

MR. FRAWLEY: Mr. Chairman, some time ago the brief of the Province of Alberta with respect to trucking went into the record, and Mr. Harries was cross-examined on it yesterday. I have not had an opportunity to read carefully Mr. Harries' cross-examination, but my friend Mr. Hume, at least, asked him a question which was left unanswered, and there may be some other matters in that category. I should like the privilegeof making a statement in reply to my friend Mr. Hume's question, which I think may be all, and any other matters of the same kind that may arise out of Mr. Harries' cross-examination. I only ask that because I could not possibly be here yesterday when Mr. Harries was cross-examined.

Then that leaves the brief of the Province of Alberta with respect to financial matters, paragraph 2, subparagraphs (c), (d) and (e) of the order in council setting up the Commission. I have a witness, Mr. Morrison, here. I want to say first that yesterday the original submission of the province was put into the record as read, but some weeks ago Mr. Morrison filed a short supplementary submission of merely two pages with respect to his original financial brief. That was sent to the Secretary and copies were given to the railways. I would have asked that that be put into the record yesterday when the original brief was put in, but no great harm was done, and I would ask that it now be put into the record at this stage this morning.

As I said, that short brief consists of two

pages. There is a further matter I want to bring to the attention of the Commission. There is a third page which would make that supplementary submission three pages instead of two, and it is to be added this morning. There is one small short third page in order that my complete brief on financial matters will then be all in one place, the submission as read into the record yesterday plus the short three-page supplementary submission which I would ask to be now taken as read into the record. I will call Mr. Morrison to elaborate slightly on one or two points.

MR. O'DONNELL: You might give us the third page.

MR. EVANS: We have no copies of this.

THE CHAIRMAN: Have you distributed copies?

MR. FRAWLEY: I have furnished the railways with a copy of the supplementary submission as filed with the Secretary some weeks ago.

THE CHAIRMAN: Not this last page?

MR. FRAWLEY: Not the third page, and as to the third page I must admit that in my rush from the hotel this morning I left it in my office in the hotel. It will be down here within five minutes in a cab.

THE CHAIRMAN: Very well.

MR. FRAWLEY: Mr. Morrison will be here in a moment. He is now arranging to have that page sent down.

KENNETH JOHN MORRISON, CALLED

EXAMINED BY MR. FRAWLEY:

Q. Mr. Morrison, this is the first time you have appeared before this Royal Commission?

A. Yes, it is, Mr. Frawley.

Q. You are a practising chartered accountant in the city of Calgary?

A. Yes.

Q. You are the senior member of the firm of Harvey, Morrison & Company?

A. That is correct.

Q. How many years have you been practising your profession in Calgary?

A. Slightly over twenty-six years.

Q. You are a member of the Institute of Chartered Accountants for Alberta?

A. Yes.

Q. And you are a fellow of the Institute as well?

A. That is right.

Q. Are you an officer in the Dominion Association of Chartered Accountants?

A. Yes, I am vice-president of the Dominion Association at the present time.

Q. Have you appeared in courts to give evidence as a chartered accountant?

A. I have.

Q. Have you appeared before public utilities commissions to give evidence as a chartered accountant?

A. I have.

Q. Have you had any experience in royal commissions set up by the Government of Canada?

A. I was accountant to the Royal Commission on Coal set up by the Dominion Government.

Q. Quite recently -- how long ago?

A. Oh, it is some three years ago, I think, now, and quite recently, just in the last few months, I was accountant to a royal commission investigating the coal industry in the province of Saskatchewan. That was a provincial royal commission.

Q. You have been accounting adviser to the province of Alberta in the rate cases before the Board of Transport Commissioners which commenced in the fall of 1946?

A. That is right.

Q. You have been accounting adviser to the province of Alberta in financial matters in connection with this Commission since it started?

A. That is true.

Q. Mr. Morrison, yesterday there was read into the record the original brief which you filed on the 12th of September in connection with paragraph 2, subsections (c), (d) and (e) of the order in council constituting this Commission. You have filed a supplementary brief, have you not?

A. A supplementary brief was submitted to the Commission, it was, Mr. Frawley.

Q. I would suggest, Mr. Morrison, that you proceed to put that short brief of two pages into the record this morning by reading it. I may say, Mr. Chairman, that there is some difficulty about the missing third page. I may have to content myself with putting in the two pages and asking for leave to put in the remaining page after it has been found.

A. I have a copy of the third page.

Q. For the purpose of the record the third page could be read in and then copies can be furnished. I am sorry I have not even got copies for the Commissioners. Would you read the supplementary submission?

MR. O'DONNELL: The whole three pages?

MR. FRAWLEY: Yes.

THE WITNESS: This is the supplementary submission of the Province of Alberta relating to paragraph 2,

subparagraph (d), of P.C. 6033, and the submission is dated January, 1950.

1. ACCOUNTING METHODS AND STATISTICAL PROCEDURES

Sub-paragraph (d) of Paragraph 2 of P.C.6033 reads as follows:

"(d) Review the present day accounting methods and statistical procedure of railways in Canada, and report upon the advisability of adopting, (or otherwise), measures conducive to uniformity in such matters, and upon other related problems such as depreciation accounting, the segregation of assets, revenues and other incomes, etc., as between railway and non-railway items."

(a) Uniform Accounting

In our brief filed on 12th September, 1949, we submitted at P. 7 that your Commission should recommend that the Board of Transport Commissioners be empowered by statute to promulgate a uniform system of accounts for Steam Railways in Canada.

In this we are supported by the Canadian National Railways which, in its brief at page 80, submits:

"Canadian National submits that there should be a uniform system of accounts for Canadian Railways and that such system should be prescribed in accounting classification to be issued by the Board of Transport Commissioners under statute authority."

In support of thissubmission the Canadian National further states at page 81:

"A management subject to accountability should not itself decide the accounting rules by which the results of its management are to be judged."

The Province of Alberta adopts and supports the foregoing observations and respectfully urges that the

Commission recommend that the accounts of Canadian Railways should be kept according to standard practices and in conformity with rules prescribed by the regulatory body pursuant to statutory authority.

(b) Depreciation

In our submission we referred at page 4 to the submission of the Province of Manitoba with respect to depreciation, which presentation, in the main, is in accordance with the views of the Province of Alberta. The recommendations of the Province of Manitoba in respect to depreciation are to be found in Chapter 5, commencing at page 7. The Province of Alberta endorses these recommendations with the following observations:

In advocating uniform accounting under statutory authority we include the submission that the basis of depreciation or provision for retirement of assets be uniform in respect of all Canadian Railways and that the adoption of a uniform method of depreciation by all railways should be strictly enforced.

We recommend that the regulatory body should require that the method of accounting for depreciation on all depreciable assets should be on a depreciation accounting straight line basis, similar to the basis presently required by the Interstate Commerce Commission.

In our submission we have already intimated that while we have a definite preference towards straight line depreciation, the paramount consideration is that the regulatory body should prescribe the method of depreciation to be followed after having satisfied itself as to the propriety of the rates involved, whether on a straight line or user basis.

In our view, however, the ascertainment of

depreciation is an engineering problem and we would observe that in the actual depreciation suffered, obsolescence is a most important factor. Emphasis has been placed by the Canadian Pacific on the value of the user basis as being determined by the use to which the assets are put. We would point out that with an efficient maintenance program the use to which the asset is put may not be as important as the obsolescence which is accruing and which is usually measured by time rather than by use.

2. SEGREGATION OF ACCOUNTS - RAIL AND NON-RAIL

The submissions of the Province of Alberta are contained on page 11 of our brief.

Because of the difficulties encountered in the recent rate hearings before the Board of Transport Commissioners as to the allocation of what has been termed "Other Income" between rail and non-rail activities, we make the submission that the regulatory body be authorized and empowered by statute to determine which of the various types of corporate income should be included as rail income and so shown in material furnished to the Board in proceedings undertaken for the purpose of determining financial need for the fixing of freight rates.

Our further submission in this regard is that it would also be the duty of the Board to determine that any income excluded from rail income will have been charged with all expenses necessary to the earning of such excluded income.

APPORTIONMENT

As the accounts of the Canadian Pacific Railway have been used as the yardstick in recent rate hearings and because of the nature of the "requirements" as set out in the applications for rate increases, a method of

apportionment of certain of these requirements is necessay.

At page 127 of the submission of the Canadian Pacific Railway it is stated:

"The funded debt and capital stock liabilities of the Company, as set out on Schedule 4B in the annual report to the Board and to the Bureau of Statistics, are not segregated between the railway enterprise and the non-railway operations, and such a segregation is not, of course, practical or even feasible except on a purely arbitrary basis.

"Proceeds from the issuance of the capital stock and other securities (apart from Equipment Obligations) have been merged in a common treasury along with all other monies which the Company constatnly receives from its many diversified operations. The Company supplied a balance sheet and profit and loss account to the Board in the 20% Freight Rate Case (Exhibit (49)-49) showing an allocation of capital and profit and loss between railway and non-railway properties."

Because of the merging in a common treasury of all monies which the Company has received by way of funded debt and capital stock, Alberta submits that in the case of Fixed Charges there must be an allocation and apportionment between Rail and Non-Rail and in the case of Dividends an apportionment. The reason for such an apportionment is that the monies received from the issuance of capital stock and other securities have been expended in both rail and non-rail activities and, therefore, the payments in respect of Fixed Charges and Dividends must be apportioned between these two operations of the company.

Alberta further submits that the basis of such an apportionment should be the ratio of the total net assets to the net fixed assets of rail and the net fixed assets of non-rail respectively. Such ratio would be used to determine the respective amounts of the Fixed Charges and Dividends to be allocated to each activity.

MR. FRAWLEY: Would you turn, please, to page 7 of the principal brief which was put into the record yesterday. That deals with the purpose of uniform or standardized accounting, and that is one of the matters which we wish to emphasize before the Commission. I would ask you to read the two paragraphs beginning near the top of page 7.

THE WITNESS:

"The main purpose of uniform or standardized accounting is that the financial statements of the operator may be clearly understood by those who for any reason are interested in the results. At the present time the taxation statutes of Canada require that the income of a company be properly determined and to that end the accounts of all taxpayers are under close scrutiny by the taxation division of the Department of National Revenue. In like manner, in the case of railways, the Board of Transport Commissioners, and on occasion the representatives of the rate paying public are required or entitled to know that the financial statements represent the operating results on a uniform basis. It is not here suggested that such uniform results are necessarily used for the purpose of determining freight rates or passenger rates. The object of stressing the necessity for

a uniform classification of accounts is that the financial statements may truly reflect the correct operating conditions and the financial position generally.

In the submission of the Province of Alberta there is definite need for the prescription of uniform accounts by the regulatory body, i.e., the Board of Transport Commissioners, and for the continuous supervision of those accounts by the regulatory body."

(Page 14446 follows)

And in our submission, therefore, the Commission should recommend that the Board of Transport Commissioners be empowered by statute to promulgate a uniform system of accounts for steam railways in Canada generally, along the lines of the accounting classifications prescribed for United States railroads by the Interstate Commerce Commission. In our submission the differences which the Canadian Pacific in its Outline Brief calls to the attention of the Commission should not be regarded as being sufficiently important to prevent the inauguration and functioning of a uniform system of accounts.

Q. I just want to ask you, Mr. Morrison, to elaborate on one or two places in the supplementary brief.

At the bottom of page 2 you say:

"Our further submission in this regard is that it would also be the duty of the Board to determine that any income excluded from rail income will have been charged with all expenses necessary to the earning of such excluded income."

Would you mind just telling me what you mean, by way of an example, there?

A. Yes. I have in mind that where you have income which appears from the accounts, or any segregation thereof, to be applicable to the two, in this particular instance, the two operations, rail and non-rail, we suggest it should be part of the duty of the regulatory board to ensure that all necessary expenses such as the apportionment of overhead and of other things should be properly made between the two departments which, in this case, have been referred to as rail and non-rail operations.

Q. Could you give me an example of some particular

[illegible]

kind of revenue which might properly be excluded from rail income and still be called upon to bear its own share of the overhead expenses?

A. I have in mind -- or an example comes to my mind -- of express earnings. In the accounts of the Canadian Pacific the net earnings from express operations as such, according to the contract, go to rail operations, while the net earnings from the financial operations under earnings go to non-rail or other income.

Q. The financial operations?

A. Of the express department; and my thought is that it should be ensured that a proper distribution of overhead in respect to those two operations should be properly made.

Q. On page 3, dealing with apportionment, there is a passage I would like you to explain. You say:

> "Because of the merging in a common treasury of all monies which the Company has received by way of funded debt and capital stock, Alberta submits that in the case of Fixed Charges there must be an allocation and apportionment between Rail and Non-Rail and in the case of Dividends an apportionment."

Why is it that in one case there must be an allocation and apportionment, while in the case of dividends only an apportionment?

A. In the case of fixed charges, there are a number of items shown in the Annual Report, which can be definitely allocated to rail or to non-rail, as the case may be.

Q. Those items need not be apportioned. They are merely allocated?

A. That is right. There still remains the balance of the fixed charges which, in our opinion, are apportionable as between rail and non-rail.

With respect to dividends, the dividends are all paid in one amount. There are the two kinds of stock, the preferred and the common stock; but in so far as the total is concerned, it would not be possible to allocate those amounts; and therefore, in our submission, it should be done on the basis of apportionment.

Q. That is fine, Mr. Morrison. Now, my lord, our submission with respect to the matter of Canadian Pacific-Canadian National co-operation, which was committed to this Commission by subparagraph (e) of paragraph 2 of the Terms of Reference is contained in the last one and a quarter pages of the brief which was read yesterday. But there was an elaboration made at the request of Commission counsel on October 22, 1949, when I received a memorandum from Mr. Covert.

As I would like to have the submission of Alberta with respect to these financial matters all at one place in the record, I would therefore like to read this memorandum from Mr. Covert together with my reply, so that the position of Alberta with respect to this matter of co-operation will all be in one place.

The memorandum which is dated October 22, 1949, reads as follows:

"October 22nd, 1949.

MEMORANDUM TO COUNSEL FOR THE PROVINCES

Re: Canadian National-Canadian Pacific Act

1. It is the intention of the Commission to request both the Canadian National Railways and the Canadian Pacific Railway to have available, at the Ottawa hearings, witnesses prepared to deal

with the subject of Canadian National-Canadian Pacific co-operation under the above Act on the points as to the general question of the degree of co-operation which is desirable and on the results which might be achieved by it.

2. It is hoped that Provincial Counsel will be prepared to examine such witnesses with a view to obtaining any information which they may desire.

3. In addition to the foregoing, it is respectfully suggested that, if the Provinces have any specific recommendations to make with regard to economies or co-operation which could be carried out in their respective Provinces, these should be submitted to the Commission and to the Railways at the earliest possible moment so that an opportunity will be afforded to all interested to deal with the matters involved when this phase of the inquiry is proceeded with at the Ottawa hearings.

4. It is suggested that each Province should state specifically its views on the following points:

(a) As to whether or not the present Act is satisfactory;

(b) As to what specific amendments they suggest should be made if it is not satisfactory;

(c) Specific suggestions as to what powers and duties, if any, the Board of Transport Commissioners should be given under the Act.

5. It is respectfully suggested that each Province should be prepared to place on record its official views on the following points:

(a) Re abandonments, whether any new procedures should be adopted in view of the fact that many applications for abandonment have been made and have been rejected because of opposition from the public.

(b) As to whether or not abandonment might more readily be granted if the Railways were authorized to substitute bus and/or truck services.

Re: Regulation of Trucks

(a) It is suggested that each Province should state specifically, and in as clear-cut a manner as possible, its views on regulation of trucking.

(b) Whether or not it is prepared to surrender jurisdiction over trucking and, if so, under what conditions.

(c) If the Province is not willing to surrender its control of trucking, would it be prepared to enter into an agreement that their regulatory commission would act in accordance with an agreed national policy and that the Provinces would enact measures uniform in principle to that end.

While it is understood that the answers to the above questions cannot be binding upon the Provinces, nevertheless the Commission feels it might be very useful to have this information placed on the record."

"12th November, 1949.

F. M. Covert, Esq., K.C.,
Royal Commission on Transportation,
Room 175, Chateau Laurier,
Ottawa, Ontario.

Dear Mr. Covert:

Re: Canadian National-Canadian Pacific Act

I have for acknowledgment your letter of 22nd ultimo forwarding copy of memorandum to counsel for the provinces.

The general position of the Province of Alberta regarding Paragraph 2(e) of the Commission's Terms of Reference is set out at Pages 12 and 13 of its Brief entitled 'Canadian National Capital Structure; Accounting Methods and Statistical Procedures; Canadian Pacific-Canadian National Co-operation". The Province of Alberta indicated in that Brief that it supports and adopts the position of the Province of Nova Scotia in the matter of Canadian Pacific-Canadian National co-operation. The Commission will find this matter discussed at pages 44 - 50 inclusive of the Submission of the Government of the Province of Nova Scotia. It is assumed from your letter and the memorandum which accompanied it that in the view of the Commissioners neither Submission has dealt with this subject in the particularity which the Commission feels is required.

I will deal seriatim with the points raised in your memorandum of 22nd October.

1. Your memorandum expresses the hope that provincial counsel will be prepared to examine railway witnesses who will attend at the Commission's request to deal with the general

question of the desirable degree of Canadian Pacific-Canadian National co-operation and with the results which might be achieved by such a degree of co-operation. I shall endeavour to assist in that regard, having in mind the difficulties indicated below.

2. Your memorandum suggests that counsel for the provinces should submit to the Commission and the Railways any specific recommendations with regard to economies or co-operation which could be carried out in their respective provinces.

It should be kept in mind that the interest which Alberta has in the question of Canadian Pacific-Canadian National co-operation is related to the matter of financial need on the part of the Railways. The wasteful duplication which the Duff Commission deplored and which the resulting Statute was designed to correct vitally concerns us, representing as we do the producers and consumers of goods carried by freight, because the effecting of economies in operation would of necessity reduce expenses and so alleviate financial need. The intimate connection between such an improved financial position and the necessity for freight rate increases is at once apparent. In view of the foregoing, we are as much interested in the possibilities for further economies under the Canadian Pacific-Canadian National Act in Ontario and Quebec, for example, as we are in such economies in the Province of Alberta.

Each of the two railways concerned has given the Commission what might be termed an 'account

of its stewardship'. (See Pages 132 - 138 of the Canadian Pacific Brief, Part I, and Pages 155 - 160 of the Canadian National Brief.)

It is obvious that the Railways themselves are in the best position possible to know what economies might be achieved through co-operation, and we call attention to the two statements in the Canadian Pacific and Canadian National briefs captioned 'Projects on which study was interrupted owing to war activities' - C.P. Brief Page 137; C.N. Brief Page 159; and 'Other projects which have received study' - C.P. Brief Page 138; C.N. Brief Page 160. Clearly the government of a province having no day-to-day contact with the operation of a federal railway, even in its own area, could not be expected to have any specialized knowledge regarding the advisability of the undertaking of joint operation or of any other operating economies.

In any event, as to this part of your memorandum I can only say that I have no instructions from the Government of the Province of Alberta in the matter and, so far as I know, the Government has not made the specialized study which it seems to me would be required before there could be offered to this Commission any considered view concerning the economies which should be adopted by the Canadian Pacific and/or Canadian National in the Province of Alberta.

3. With regard to the specific suggestions which are made in Paragraph 4 of your memorandum, I refer again to the Submissions of the Province of Nova Scotia in this matter, and I would also call the attention of the Commission to the recommendations

upon this subject contained on Pages 5 and 6 of the Brief filed by the Canadian Federation of Agriculture.

4. With regard to your request for the views of this Province on the subject of rail abandonments, I must advise that in view of the position taken by the Government of the Province of Alberta with regard to highway transport I could not subscribe to the proposition that in conjunction with the abandonment of the rail lines railways should be authorized to substitute bus and/or truck services.

Yours very truly,

(Sgd. J. J. Frawley."

My letter to Mr. Covert, which I have just read, completes what I have to say with regard to subparagraph (e) of paragraph 2 of the Terms of Reference.

CROSS-EXAMINATION BY MR. EVANS:

MR. EVANS: My lord, I had not intended to take part in the cross-examination of this witness. Mr. Sinclair, who will follow me, prepared the cross-examination on the brief and on the supplementary brief. But in view of the addition to the supplementary brief, which deals with a subject upon which I had some experience, I would ask that the Commission permit me to cross-examine on that one subject, leaving to Mr. Sinclair the balance of the cross-examination.

MR. EVANS: Q. Now, Mr. Morrison, would you direct your attention to page 3 of your supplementary brief on the matter of apportionment. I take it that what you are suggesting is that there should be legislation setting forth the basis of apportionment, or just what is your submission?

A. No, I would not suggest -- at least, I did not propose, if that could be read into the suggestion, that the proportion of apportionment should be set out in legislation.

Q. But your submission involved legislation which would direct the Board to make an apportionment?

A. Well, I had not thought just how the legislation would be worded. My submission is that the regulatory body should have the right to direct an apportionment.

Q. Are you suggesting that they have not now the right, if they thought fit to do so?

A. No, I do not say that they have not the right. They have, for instance, made an apportionment in the matter of fixed charges. They have not made an apportionment in the matter of dividends.

Q. Is it your suggestion that the failure of the Board to apportion dividends as you want them apportioned should be corrected by legislation in any way?

A. No, not my submission.

Q. May I take it that your submission with regard to apportionment does not involve a change in the present legislation?

A. That is true.

Q. Coming now to the question of apportionment itself, is it your view that this Commission should be asked to direct somebody, to direct the Board or somebody, to reflect these views of apportionment, apart from legislation?

A. Yes. It would be my submission that the Commission, if they agree with our contention, should make that recommendation.

Q. Now then, as to the apportionment, do your suggestions regarding apportionment of fixed charges and dividends envisage any question as to whether, in the process of apportionment, consideration should be given to the return provided by rail operations on the rail investment?

A. Well now, "envisage"? We think, as you probably have in mind, a rate base and a rate of return, because I can see a distinction; and it was because of that reason that I mentioned at the opening of page 3, "because of the nature of the requirements". And having that in mind, it would seem to me that the apportionment would not be necessary if we had a rate base and a rate

of return. We would, in a sense, have two separate corporations, one rail, and one non-rail.

Q. Well, two separate corporations? You mean two separate investment accounts?

A. Exactly.

Q. Upon which, in one or the other, a rate base could be calculated?

A. Calculated.

Q. And a rate of return provided?

A. And a rate of return provided, which would then give an amount as to return.

Q. With regard to the matter of requirements, the propriety or fairness of apportionment of any so-called requirements would depend on whether in the result you have provided a fair return on whatever investment there might be in the railway property.

A. That could be taken into consideration. But in my opinion we are dealing with two entirely different methods of arriving at the return to be given to the applying company.

Q. I am accepting that; and if you are just -- I think it is my fault -- but if you would just apply your mind to the question: would not the propriety or the result achieved by any method of apportionment of so-called requirements depend on whether there emerged a rate of return which was fair, having regard to the investment in rail property?

A. I cannot see that it follows.

Q. I put to you a concrete example. If in the process of the apportionment of fixed charges and dividends, you should emerge with an allocation of fixed charges and dividends to rail enterprise so that the surplus for rail enterprise provided a return of,

let us say, 2 per cent on the depreciated investment in the rail enterprise, would you then feel that you should look again at the investment, as to whether there should be an apportionment?

A. No, not in my submission, if the application was made on the basis of requirements.

Q. The application?

A. We are speaking now of application.

Q. We never mentioned "application". I am asking you whether, as an accountant of experience, it would be part of your philosophy that there should be an apportionment of dividendsand fixed charges which, added together with the surplus provided for rail operations in the formula, would produce less than a fair return on investment?

A. I cannot answer your question without some qualifications, because, if I were regarding a rate of return to a company with a rate base, and a rate of return, I would not require to consider any matter of apportionment.

Now, if the application came in the form of asking for a certain amount of fixed charges and of surplus, and there were two departments involved, I would think it would be necessary, irrespective of the amount of the rate of return which would emerge from the calculation, I would think it would be necessary to make an apportionment.

Q. Now, the fact is, is it not, that when the Board was asked by the Province, and I speak of the Board of Transport Commissioners, when the Board was asked by the provinces to provide an apportionment and allocation of fixed charges, and an apportionment of dividends, the

railways took the position that you had to test the result of the apportionment by the alternative of providing these requirements we have been speaking of in terms of return on the investment in rail property. Isn't that true?

A. I recall that the railway took that position, certainly.

(Page 14462 follows)

Q. I take it that your position is you prefer not to express any opinion on the alternatives I have put to you, merely because the application may not have specified that the railways were applying for an increased base on a rate of return on rate basis?

A. That would be my view, that is correct.

Q. So that you were not the other day in the Board expressing any opinion as to the equities or fairness of the proposition?

A. That is true.

Q. Then as an accountant I am going to ask you this question. Are you prepared to take the responsibility of saying in your professional capacity that there should not be a fair return on the depreciated investment of the rail enterprise?

A. Indeed, no, the very opposite, Mr. Evans.

Q. Now, then, it follows, if that is the proper and equitable thing, that any apportionment must be viewed in the light of the return which that apportionment would provide on the investment of rail property?

A. Now, that is your submission.

Q. I am asking you.

A. You say it must be, do you?

Q. Yes.

A. No, I don't say it must.

MR. FRAWLEY: That is the second time you have asked the witness that.

MR. EVANS: Mr. Frawley, I am asking the witness. Q. Now, was Alberta supporting Mr. Egan

in his apportionment of dividends theory?

THE CHAIRMAN: Who is Mr. Egan?

MR. EVANS: He was an accounting witness before the Board. Q. Was Alberta supporting Mr. Egan in his theory of apportionment of dividends in this recent rate case?

A. Well, the method of apportionment of dividends which Mr. Egan put forward before the Board was certainly discussed with me as representing the Province of Alberta.

Q. Did you approve it?

A. In some measure, yes.

Q. In some measure?

A. In some measure. That is, from the long point of view, if you were to take the results of the Canadian Pacific Railway over a long period of time the results emerged closely to the results which in my opinion there would have been on a more proper basis, namely that of the investment in fixed assets.

THE CHAIRMAN: The investment in what?

A. The respective investments, sir, in fixed assets of the two departments, rail and non-rail.

COMMISSIONER ANGUS: What does a long period of time mean?

A. We looked over the record, sir, for a period of some 30 years.

MR. EVANS: Q. But that was not the basis on which Mr. Egan submitted his exhibits in that case.

A. That is quite true, but I am merely giving you the reason why we supported that matter to that extent.

Q. Then I gather that your answer is that

you did not support the basis put forward by Mr. Egan in his exhibits?

A. That is right, in its entirety.

Q. But you did not, through your counsel or otherwise, express your opinion on the contrary to Mr. Egan in that case?

A. You mean I did not?

Q. Yes.

A. You mean, to whom?

Q. You did not to the Board.

A. No, I did not to the Board.

Q. As a witness or through your counsel express disagreement with Mr. Egan's proposal?

A. I don't recall anything that counsel may have said.

Q. Without going into these proposals in detail, they were based upon the actual earnings in rail and non-rail enterprises?

A. That is right.

Q. So that if in the period he took, which was the few years prior to the present time, the earnings happened to be low or were non-existent, then the dividend allocated or apportioned to rail would also be low or non-existent?

A. That is right.

Q. And as an accountant you felt you could not subscribe to that?

A. That was one of the factors, yes.

Q. But you did have in mind that you might fairly apportion, based upon a long period in the past, the earnings actually achieved by the rail enterprise and the other income enterprises?

A. That is right.

Q. So that in the long period you would have in mind, I suppose, the period of some fifteen or twenty years in which the rail operation earned and paid dividends of 7%, and other income enterprises earned and paid dividend of an additional 3%?

A. That period was included.

Q. Yes, so that your period of examination, as it were, your period of study for the purpose of arriving at the apportionment which you have advocated, would have taken into account that period?

A. Well now, the last part, which I would have advocated?

Q. I thought you said that was your view?

A. No, I would not have advocated it at any time. I mean, I said I agreed that the proposition comes in a study of that kind, and the results emerged closely approximating to percentages that would emerge from an apportionment on the basis of the ratio of fixed assets in the two departments.

Q. Yes, now, really what I want to gather from you is this, that all along when Mr. Egan's apportionment theories were being put forward, although Alberta apparently supported the proposition put forward by Mr. Egan, you, as the accounting adviser for Alberta had a different view as to what should be the basis of the apportionment. Your view, as you now express it, was that the apportionment should be related in round terms to the fixed assets or to the investment?

A. Yes, I prefer my basis to that.

Q. Now, then, the principle upon which you would allocate dividends in proportion to the fixed assets

would be, I suggest to you, a recognition of the principle that a level of fixed assets, whether on one side or the other, should have a return to be earned on those assets.

A. Should have a return?

Q. Yes.

A. That is right.

Q. And the question really gets down to this, that whether you go on an apportionment basis or whether you go on a rate of return on investments or rate base, the result to be achieved is to achieve a fair return on a rate base from an investment?

A. No. At least, I would not subscribe to the whole of the question in that way, Mr. Evans, because I come back to the first proposition that I made, that if you are deciding the matter of a return to the company on the basis of a rate base and a rate of return, you do not require any apportionment.

Q. Well, I have gone with you on that.

A. But then, as I appreciated your question, you joined the two up, and I feel that they must be separated.

Q. In other words you do not test the one by the other.

A. That is correct.

Q. Now, as an accountant, I assume you have a number of corporations whom you represent?

A. We are auditors for a number of corporations, certainly.

Q. Now, as an accountant with corporations as clients, are you prepared to offer your opinion here as contrary to this proposition that I am going to make

to you, and I will make it in several stages so that we will not have any possibility of being at cross purposes. First, that any public utility corporation, be it a railway or be it any public utility corporation or any corporation - -

A. I was just going to ask, are you making a distinction between utility corporations and non-utility corporations?

Q. Let us make the distinction for the first stage.

A. Yes.

Q. Any public utility corporation is entitled to earn a fair return on its investment?

A. Yes.

Q. And the reason why you, as an accountant would take that position is that until it does so it cannot attract capital to its enterprises?

A. That is one of the reasons.

Q. That is the prime reason?

A. I would think so, I would think it is a very important reason.

Q. Yes, so that in the regulated utilities which we have been discussing the problem is for the regulatory authority to examine into that question as to whether the utility has or has not a fair return on its investment?

A. Yes.

Q. Now, the same problem does not arise in regard to unregulated corporations, does it?

A. That is true.

Q. So that the unregulated corporation will cut its cloth according to its ability to earn.

A. Yes.

Q. Unrestricted, depending on its ability to sell or produce its commodities on the market?

A. Yes, as a matter of fact, Mr. Evans, I think there is hardly any fair comparison.

Q. I am just trying to distinguish; I am not comparing.

A. In my opinion there is hardly any fair comparison from that point of view between a regulated company and an unregulated company.

Q. I don't want to pursue the comparison or the distinction other than to make it clear that that distinction comes about because of the fact that the utilities are usually regulated by some tribunal or government authority?

A. That is correct.

Q. Now then, you have given it as your opinion that it is necessary for a corporation operating a utility to have a fair return on its investment?

A. That is right.

Q. And I think you would agree as an accountant that any rates that were regulated which did not produce that fair return,or perhaps I should say, which did not permit the corporation to earn a fair return?

A. Yes.

Q. Would be unjust and unreasonable to the corporation?

A. I would think so.

Q. Then I am going back to ask you this final question. Having regard to what you have said, how can you as an accountant express your view that in the case in which we make an application for increased freight rates based on requirements, that there should

be no testing of those requirements by the one test which you, as an accountant, say is necessary to arrive at just and reasonable rates?

A. That is not my view, that there should be no testing. There may be testing if it is said to be necessary, but I was discussing in the light of that question as to whether or not there should be any apportionment of certain of the charges, namely fixed charges and dividends, in the light of that kind of situation. I have no quarrel with the idea of having a test made, but in my opinion that does not in any way detract from the necessity of making an apportionment.

Q. Now then, if the sum total of the so-called requirements, together with the rail surplus, provide no more than a fair return on railway investment, you would still argue that there should be an apportionment?

A. An apportionment, but it does not necessarily mean that there may not have to be some further surplus.

Q. So that I have you this way, that if you did make the apportionment you might then take into account in order to apply your test of a fair return, some question of increased surplus?

A. That is right, that to my opinion would be the correct way.

Q. Now, is that the final view of Alberta or is that your personal view?

A. That is my personal view. I can only speak in that capacity, Mr. Evans.

Q. Perhaps we will hear from Mr. Frawley what the official view of Alberta is, because it is

certainly a new expression coming from Alberta?

A. It was a new set of circumstances put forward Mr. Evans.

MR. FRAWLEY: A lot of hypothetical questions you are asking the witness and you say you want my view.

(Page 14470 follows)

CROSS-EXAMINATION BY MR. SINCLAIR

Q. Mr. Morrison, I have a few questions in connection with Part II of your Brief.

A. The supplementary, Mr. Sinclair?

Q. No, with Part II of the main Brief and I will try to fit in the supplementary.

A. At Page 4?

Q. Yes, it starts at Page 4. Now, the first subject that you deal with is a uniform classification of accounts?

A. That is right.

THE CHAIRMAN: What page did you say, Mr. Sinclair?

MR. SINCLAIR: Page 4 it is, my lord. In the third paragraph you said that the importance of uniformity in standardizing accounts has been recognized by many industries?

A. That is right.

Q. And that it is, you would say, a usual thing to find uniformity in industries?

A. No, unfortunately not, Mr. Sinclair.

Q. Can you give me some examples of any other industries where there is uniformity?

A. Well, there is an amount of uniformity in the accounts of electrical companies, electrical producing companies. They follow a formula set out. That is one, and to some extent -- not as much as we would like to see -- in certain coal companies. I am speaking now of the Dominion of Canada. Those are the two that come to my mind at the moment.

Q. Now, there is not complete uniformity in those?

A. Oh, indeed no.

Q. And are you suggesting there should be complete uniformity in the classification of railway accounts?

A. If possible, yes, very much so for this essential difference in the matter you have just mentioned, Mr. Sinclair, that I was thinking there of unregulated companies and uniformity in those are not as important, in my submission, as the accounts of regulated companies.

Q. Are electrical utilities regulated companies?

A. Yes.

Q. There is no uniformity there?

A. Not complete uniformity.

Q. Do you think it is possible to secure complete uniformity in Canadian railway accounting?

A. I am not sure; I don't know.

Q. You have considered the problem?

A. Yes.

Q. You know that there are essential differences between the Canadian National and Canadian Pacific?

A. Not accountingwise; I do not know of any essential differences accountingwise.

Q. Do you not think that the treatment between profit and loss balances in the Canadian Pacific in the shareholders' equity account and the Canadian National is fundamentally different?

A. Not for the purpose that we have in mind, Mr. Sinclair. I think the important accounts in which I would speak of uniformity are the operating accounts.

Q. And when you talk about uniformity, you do not include anything except operating accounts?

A. I did not say that; I said the important ones are the operating accounts. There would be less difficulties present in making comparisons if the operating accounts were uniform. The other accounts, I think, could

lend to analysis much more readily because they are much less in use.

Q. And so, therefore, you recognize that in any classification of accounts, some option or discretion must be left with the Company?

A. Yes, but as little discretion as possible in the operating accounts which are the essential ones. In fact, I would go further; the operating and capital cccounts, I think, ought to be as uniform as possible. Now, I agree that to get complete uniformity may be an ideal but I think it is desirable, if possible.

Q. You would agree, would you not, that it is not a matter that lends itself to statutory treatment?

A. You mean by prescription in statute? Oh no, I certainly did not have in mind that the statute would prescribe the kind of account.

Q. That is a matter to be left for negotiation?

A. I would say it is a matter to be determined by the regulatory body.

Q. In consultation with --

A. With the railways, certainly in this case.

Q. And the present Act enables the Board to provide a uniform classification?

A. Well, I wonder, sir. I might agree with it but there seems to be some doubt about it. If I may refer to the recent judgment of the Board --

Q. We know about that; I am asking you as a professional witness --

A. May I answer the question, Mr. Sinclair?

Q. I wanted your opinion.

A. But I said there appears to be some doubt about it in the Board. Now, if there is doubt in the Board, I think it may be proper to suggest there may be some

doubt in my mind.

THE CHAIRMAN: What judgment of the Board are you referring to?

THE WITNESS: I am referring to the judgment of September 20, 1949, in the recent rate hearing -- the eight per cent Judgment I believe it is referred to at Page 13.

MR. FRAWLEY: Would you please read what the Board say, so that it will be before the Commission?

MR. SINCLAIR: It has been before the Board, Mr. Frawley.

THE CHAIRMAN: I would like to have it read.

THE WITNESS: At Page 13, reading the second from the last paragraph at the bottom of the page:

"Counsel for the respondents have also maintained that if Other Income is not to be considered in fixing a level of freight rates that this Board exercise active control over the establishment of what is rail income and what is Other Income. The foregoing contention points directly to a fundamental difficulty experienced by the Board -- that the Railway Act does not, in its present form, give the Board authority to control the accounting procedure of the railways in the manner advocated by counsel."

MR. FRAWLEY: Then, the next paragraph.

MR. SINCLAIR: Why not the whole thing, Mr. Frawley?

THE WITNESS: I am sorry:

"In this connection it should be noted that uniform accounting and a review of the present day accounting methods and statistical

procedure of railways in Canada are by paragraph 2 (d) of Order-in-Council P.C. 6033 referred to the Royal Commission on Transportation."

MR. SINCLAIR: And you know, Mr. Morrison, that the view of the Canadian Pacific is that Section 126, coupled with Section 32 (2) of the Railway Act enables the Board to prescribe a uniform classification of accounts?

A. I have heard that stated, Mr. Sinclair. I do not know if it is so.

Q. Is it your suggestion that if that is not clear that that might be clarified so that the Board's power in regard to prescribing would be obvious to everybody? Is that what you have in mind?

A. I have in mind that it should be under the statutory control of the Board.

THE CHAIRMAN: You have referred, Mr. Sinclair, to 126?

MR. SINCLAIR: Yes, my lord, and 32 (2).

MR. FRAWLEY: Your lordship might also be interested to know that at Page 21 of the factum of the Canadian Pacific in the Supreme Court of Canada recently that argument has been put forward that there is presently in the Railway Act the authority which the Board itself felt it did not have.

THE CHAIRMAN: Did the court express any opinion about it?

MR. FRAWLEY: I think not, sir.

MR. SINCLAIR: It was not necessary.

MR. FRAWLEY: Well, that is very nice for you to say that.

MR. EVANS: If the Commission would like to have in the record at this place an argument in support of that

on those two sections, I would be very glad to give it to them. If not, I will leave it to the end.

THE CHAIRMAN: If we can have it some time, but it does not matter when.

MR. EVANS: Whenever it suits your convenience. I am quite prepared to argue it now just to put it on the record in a convenient place if the Commission desires it.

THE CHAIRMAN: We will leave it until the final argument.

MR. FRAWLEY: It is all written out in the factum before the Supreme Court.

THE CHAIRMAN: We have not read it yet. Go on, Mr. Sinclair.

MR. SINCLAIR: What is, in your view, Mr. Morrison, the purpose of uniformity?

A. In order to be able to ascertain in this case the results of the two railways and to know that those results are properly comparable.

Q. Is it to test operating efficiency?

A. Not necessarily. It would serve that purpose, no doubt. All I have in mind, Mr. Sinclair, as you may well know, is that we had great difficulty in being sure that we were always comparing comparable things and, in my submission as an accountant, that is the only way you can compare things, to be sure that they are properly comparable and, therefore, we suggest that that would be accomplished by uniform accounting.

Q. The only reason that you are putting forward for the standard classification of accounts is so that there can be comparability of operating results?

A. Of operating results and all those things that might flow from it. I am not prepared at the moment

to particularize all the things that might flow from it but certainly that would be the most important.

Q. And one of the most important matters in operating results, in your view, I presume, would be the matter of depreciation?

A. Oh, that is just one of many. I think all of them are equally important but depreciation is a very important one.

Q. Now, it would be more important, would it not, Mr. Morrison, to have both roads depreciating the same assets than it would to have the method of depreciation the same?

A. You mean the same kind of assets?

Q. The same type of assets?

A. Well, I think that depreciation, if we are speaking of that now, Mr. Sinclair, should be uniform as to method and as to the kind of assets to be depreciated, yes.

Q. The question I asked was, it would be more important to have the same kind of assets being depreciated than it would to have the same method of depreciation applied?

A. Not more important; I think both are necessary.

Q. You think that there is no greater difficulty in making comparisons where there is one company having assets on retirement accounting and another company having that same type of assets on depreciating accounting?

A. That leads to confusion, certainly, but equally, Mr. Sinclair, in my submission if you had the same type of asset and used different methods, it would be equally wrong.

Q. It would be equally difficult to compare?

A. It would not be equally difficult; I think there

would be some difficulty in the first instance and, therefore, my suggestion is to eliminate all difficulties.

Q. That is the question I put, Mr. Morrison. I said it would result in more difficulties?

A. Yes, that is right.

Q. If one road was using retirement accounting and another road using depreciating accounting in respect of the same type of assets?

A. That is true.

Q. Than would result in different methods of depreciation being applied to assets?

A. Yes, that is right.

Q. Now, at the bottom of Page 4 you refer to the Interstate Commerce Commission classification?

A. Yes.

Q. Now, you have studied this and studied the accounting of the Canadian Pacific through these rate cases, I presume in some particularity?

A. Not to any great extent.

Q. With some particularity?

A. That is correct.

Q. And would I be correct in saying th t essentially the Canadian Pacific follows the classification of accounts as prescribed by the Interstate Commerce Commission?

A. I say essentially that is correct.

Q. And the differences, would you agree, Mr. Morrison, arise from the different concepts of the businesses conducted by the Canadian Pacific and the American railways?

A. Well, I would not know what, in the opinion of the Company, would give cause to the differences.

Q. I am asking.

A. I don't know.

Q. Well, you know the differences that exist in the way express is handled on American railroads and by the Canadian Pacific?

A. I know that there is a difference. I am not familiar with the American method other than there is a difference in the express handling of the Canadian Pacific and the Canadian National.

Q. Well, a fundamental difference as might result in a difference in treatment of accounts as between the United States railroads and the Canadian Pacific?

A. I was not suggesting here that there should be full comparability with American roads. I am speaking of Canadian roads at the moment.

Q. You are not suggesting that the Interstate Commerce Commission classification be adopted?

A. No, not at all, Mr. Sinclair.

Q. You think there should be developed a classification that would fit Canadian conditions?

A. That is right and, if possible, of course, if it were possible to fit that in to the comparison with the American roads that would be so much better. Then you would have a further method of comparability of operating results but the important thing is a Canadian classification.

Q. Would you agree that an objective in making the Canadian Classification would be to make it applicable to all railways in Canada?

A. Well, with some modification in the small railways, Mr. Sinclair.

Q. You would not make the differences that are followed by the Interstate Commerce Commission in its classification between Class I and Class II and smaller railways? You would not make separate classifications?

A. Yes, I think that would be perfectly in order. I would not suggest that the smaller railways for instance in Canada should follow a very elaborate classification of accounts.

Q. Are you suggesting that there is no necessity for the Canadian classification that would be applicable to the Canadian Pacific to be an elaborate one?

A. When I speak of "elaborate" I mean which would be comparable with the classification which is in Class I railroads in the United States at the present time.

Q. Have you considered whether there could be a consolidation of some of the accounts now in the Interstate Commerce Commission classification in this proposed classification?

A. No, I have not, Mr. Sinclair, for this reason that I now express, and I mention it on Page I of our submission, that we might have an opportunity of examining the pertinent studies made by the Commission's technical advisers on the matter of uniform accounting so that we have not made any study of the possibilities of consolidation or any other changes, for that matter.

Q. As an expert accountant, Mr. Morrison, you would agree, would you not, that the object would be to make the classification as simple as possible?

A. Yes.

Q. On Page V you refer there to the resolution of the United States Senate re costs and the transmittal of that resolution to the Interstate Commerce Commission and then the report that resulted from the study by the Interstate Commerce Commission?

A. Yes.

Q. Are you suggesting that that method set out in Senate Document No. 63 or as re-issued is being followed

by any American carrier?

A. No, I am not suggesting that at all.

Q. Do you suggest that rail service costs should be determined in the manner set forth in the document referred to Senate Document No. 63?

A. Well, I would not know without a complete study of that Document.

Q. I just did not understand the purpose, Mr. Morrison?

A. The purpose is to show, in my opinion, Mr. Sinclair, the desirability of uniformity. Nothing more nor less.

Q. You followed that reference in your brief by saying: "As a conclusion, it will, therefore, be appreciated --"?

A. Excuse me, until I find it.

Q. Third paragraph, Page V: "It will therefore, be appreciated"; that is, as I read it, on account of what you have just said?

A. Well, not just only on account of what I have just said. Do you mean in respect of Senate Document No. 63?

Q. And the Interstate Commerce Commission?

A. And on all other things that I have said.

MR. FRAWLEY: Everything on Page 4 surely you will let us have, Mr. Sinclair?

MR. SINCLAIR: I am talking to the witness. If Mr. Frawley wants to go into the witness box we will wait until he gets there.

THE WITNESS: There is no disjoining of my conclusion with all the foregoing material. It is only part of it. The reference to Senate Document No. 63 is not more important than all the other material that

has gone before it.

Q. I wanted to know what importance it has?

A. To show, as I say, the desirability in the minds of all those connected with these matters of uniformity.

Q. That there should be cost findings?

A. Yes, and cost findings must be on a uniform basis; otherwise they cannot be comparable.

Q. On page 5 you go further and by way of illustration you refer to the general instructions given to the United States railroads for the uniform system of accounts relating to road and equipment?

A. Yes.

Q. You say:

"The carriers records shall be kept with sufficient particularity to show" --

and you go on to say that they shall fully enumerate the various items of the accounts?

A. That is right.

Q. Now, do you suggest that full information with respect to railway operations has not been made available by the railways to the Board of Transport Commissioners under present legislation?

A. You mean separately -- no, I am not suggesting it has not been. I say it will be of much easier examination if the accounts are kept on a uniform basis.

Q. But they can get now under the present legislation any information they require?

A. Certainly, no doubt about that.

Q. You also are aware that the railways file with the Bureau of Statistics annually a report that is made available to the public?

A. Oh, yes.

Q. And the Bureau of Statistics could secure additional information if they thought it was necessary under the statute in the public interest?

A. Oh, I am sure they could.

Q. In your supplementary brief, page 2 --

A. Page 2?

Q. Yes. I am now turning to the question of depreciation. It is your view that depreciation is an

engineering problem, is it?

A. The ascertainment of the rate of depreciation, yes.

Q. It is not an accounting problem?

A. No.

Q. You would not suggest that ascertaining the service life is a matter of accountants' studies and judgment?

A. No, I think not.

Q. Solely an engineering problem?

A. Not necessarily solely, but mainly; I think the accountant can be of assistance.

Q. You think it is the accountant assisting the engineer?

A. Yes.

Q. Not the engineer assisting the accountant?

A. Oh, no.

Q. Now, the service life is only one matter in depreciation, is it not?

A. Well, it may be an all-inclusive term.

Q. Service life?

A. Service life could be.

Q. So when you use "service life" you include in that the amount that would be necessary to charge to reflect current wastage?

A. No, no; service life is the measure, whether by unit basis or yearly basis, my appreciation of the term "service life."

Q. Do you make any distinction between the term "service life" and "depreciation"?

A. I do not think they are the same at all. One is the yardstick for measuring the amount of depreciation, for measuring it. Depreciation is the amount that will

be set aside.

Q. You say the ascertaining of service life is an engineering problem, and you also say depreciation, as you have just described it, is an engineering problem?

A. Depreciation, of course, flows from the ascertainment of the service life. It flows from it. You determine the amount of depreciation after you have determined the service life.

Q. And you say that the determining of the amount of depreciation is an engineering problem?

A. No, I say the determining of the rate of depreciation is an engineering problem. The determining of the amount is a simple mathematical calculation.

Q. So that the only part of the accountant in depreciation is to make the mathematical calculation?

A. In so far as the accountant is concerned, that is right.

Q. In your view does depreciation reflect accurately the physical depreciation in any given year?

A. I would not think so. All the evidence I have ever heard is that the book depreciation, as we refer to it, is usually in excess of the actual depreciation, sustained depreciation.

COMMISSIONER INNIS: Q. Do the Interstate Commerce Commission accounts take that into account?

A. I do not know as to whether or not they have taken into account the point as to whether or not they accurately reflect the actual depreciation sustained. They allow certain rates of depreciation which are expected and deemed to measure the wastage, but I have no information as to how closely their rates do actually measure the actual wastage.

Q. But you would have some doubts as to whether they did?

A. Yes, I would.

MR. SINCLAIR: Q. So that the engineer faced with this problem is attempting to distribute, is he, the cost of the asset?

A. No, the accountant will distribute the cost on the information given him by the engineer.

Q. That is not a problem?

A. That is not proper?

Q. That is not a problem?

A. No.

Q. That is just a mathematical calculation?

A. That is right.

Q. Now, in the allocation of charges of this original cost of the asset do you consider that some allowances should be made for occurrences in year?

A. For occurrences within a year -- I am not quite sure I follow you, Mr. Sinclair.

Q. It is an engineering problem, determining the service life?

A. The service life, that is right, at a certain date.

Q. You said that all the accountant then did was to make a mathematical calculation applying that rate to the cost of the asset?

A. That is right.

Q. And it would be your view that that would be dividing one into another, would it?

A. You would determine the rate. If it was twenty years it would be 5 per cent of the asset. If it would last twenty years to recover the full amount of the asset

it would take a rate of 5 per cent, reducing it to figures. You would then multiply the amount involved in the cost of these assets by the 5 per cent, and that is how you would determine the charge for depreciation in respect of that year.

Q. And under that could you take into account occurrences within the year?

A. Yes, certainly.

Q. You can vary one year's charges to the next?

A. Oh, certainly you would. On the straight line basis that is exactly what you would do because you have additions to your assets throughout the year, and they are going to depreciate.

Q. I am not dealing with changes in inventory; I am dealing --

A. I am sorry; what changes were you dealing with?

Q. Changes arising from use.

A. Changes arising from use. Well now, we really must be discussing two things. There are two general methods --

Q. Let us not have too much theory. Try to help me if you can. I may be at cross purposes with you.

A. Perhaps I did not understand your question.

Q. No doubt I am at fault. What I am suggesting to you is that after this mathematical calculation had been made --

A. Tell me what the mathematical calculation is supposed to be.

Q. What you told me.

A. I know.

Q. The service life would be divided into the cost of the group of assets?

A. There I am thinking of straight line depreciation.

Q. That is right.

A. And you have the same thought.

Q. That is right.

A. O.K

Q. I am asking you whether that will allow for any occurrences within the year?

A. Occurrences -- that, of course, is a very large and wide field. It will allow for additions to the asset. If you have that in mind as an occurrence the answer would be yes. If you have something else in mind --

Q. What other occurrences?

A. I am sorry --

Q. You tell me what other occurrences it would allow?

A. It will allow for no other occurrences if it is on a straight line basis other than additions to the asset.

Q. I see. So that actually the only occurrences are additions to the inventory value under the straight line method?

A. That is right, and when you say "additions" there might be reductions, you understand.

Q. Quite so -- changes?

A. Changes is a better word.

THE CHAIRMAN: Mr. Sinclair, we will take a recess for a few minutes.

---Recess.

MR. SINCLAIR: Q. Mr. Morrison, you told me that the only occurrence that could be taken into account under the straight line method in any given year would be changes in the inventory?

A. The only occurrence in respect of depreciation charges --

THE CHAIRMAN: What is the question?

MR. SINCLAIR: Q. I said Mr. Morrison told me the only occurrences that could be taken into account in dealing with depreciation charges in any given year under the straight line method were the changes in inventory?

A. That is correct; that would affect the amount of depreciation charged for that year.

Q. You will agree that there are other occurrences in a year in any business besides changes in inventory that can affect depreciation outside of the straight line definition of depreciation?

A. Other occurrences -- it is quite a vague word, Mr. Sinclair. I think you had better define it for me and then I will be quite sure that I am --

Q. Let me suggest that depreciation does not measure the physical depreciation of the asset or group of assets?

A. It is expected to. Whether or not it does, of course, is quite open to question.

Q. It does not do it on an engineering appraisal?

A. It does it on an engineering appraisal basis.

Q. It does?

A. It does. It is supposed to. Let me put it this way so that there will be no misunderstanding. Dealing first with the straight line method of depreciation, the engineers estimate the life of the asset taking into consideration use, obsolescence,and all of those related matters, and they say the asset will last so many years. The accountant then is in possession of the information which will enable him to make the necessary charge for the depreciation in order that the costs of the year may properly reflect wastage of the assets earning the income.

COMMISSIONER INNIS: Q. Why does the accountant pursue such a conservative policy?

A. The accountant?

Q. Yes?

A. It is not conservative in so far as he is concerned. He is given that rate by the engineer. The engineer says to him that it will last, shall we say, twenty years.

Q. I got the impression that book depreciation was much more rapid than actual depreciation?

A. That is what has actually transpired in actual practice, not dealing only with utility accounts but generally speaking.

Q. That is the fault of the engineer and not the accountant?

A. Because the basis of depreciation has been set in the main in Canada not from either an engineering or accounting point of view but mainly from an income tax point of view. In other words, the rates that have been set and used in most cases, in my opinion, are actually in excess of the actual physical depreciation.

Q. Have you any further detailed information as to the effects of income tax on depreciation systems?

(Page 14492 follows)

A. In what regard, sir?

Q. I mean, generally.

A. No, other than the Income Tax Department have allowed certain depreciation rates, and these, in the main, have been adopted by businesses. I think they will find they have assets which, in many cases, are fully depreciated, while the assets are still there and being used for the purpose of the business. That is why I said that, in my opinion, the rates are actually in excess of the actual physical depreciation.

Q. And it goes back to the Income Tax?

A. Yes, sir.

COMMISSIONER ANGUS: Q. If you were calculating, for rate making purposes, and you found that the engineers had given you a wrong rate so that something was written off in twenty years which, in fact, lasted twenty-five years. Would a correction be made?

A. No, it is not usual. The depreciation goes through the books and it is accumulated, and equals the value of the assets, but you still have the assets, yet it is fully depreciated. You can make a correction by reducing the depreciation reserve, and credit that amount back to surplus. It means that your earnings for those years were really understated.

Q. If that correction is not made, would the gain or loss from the error affect the shareholders of the company, or would it affect posterity, so to speak, I mean the users in later years?

A. Let us assume that the depreciation charges are too high. Therefore the earnings of those years which are involved would have been too low. Therefore one might say that if the earnings had been greater, the company might have declared greater dividends.

With that hypothesis, one might say that the shareholders suffer. On the other hand, the fact that you made a greater depreciation than is necessary might suggest that the book value of your assets does not reflect the true value, because your reserves are too high.

Q. If the rate base, for rate making purposes, is unaffected, shall we say, by the assets being written off too quickly, would not the effect on the railways, so to speak, having got something for nothing, make its subsequent costs a little lower?

A. It is also depleted; if we were determining a rate here on a rate base, and you had taken too much depreciation -- the company had taken too much depreciation -- and the regulatory body said: That is the amount of depreciation which has to be taken into consideration in ascertaining your net investment --

THE CHAIRMAN: Q. You mean overstatement by the company, or something else?

A. The actual amount which would in this case include overstatement; they are, in a sense, penalizing themselves; but if the regulatory body would say, "You are only going to get, on your rate of return, the cost of your assets less depreciation --

MR. SINCLAIR: Q. Depreciation is the allocation of the value yearly, the yearly allocation of the value of the assets over their useful life?

A. If you would say "cost" instead of "value".

Q. And it does not attempt to measure the actual physical depreciation of an asset in any given year?

A. Yes, it is supposed to; it should be synonymous, those two things; that is to say, if the estimate of depreciation is proper, then at the end of the lifetime,

whether that unit passes by the user method or by the straight line method for years, the asset should be fully written off at the end of its service life.

Q. I am trying to discuss with you the straight line method. I have not said anything about the user method.

A. I thought you suggested "use" a moment ago.

Q. Well, under the straight line method, the charge to depreciation of a group of assets which was held in reserve --

A. Yes.

Q. Which was held in reserve in one year and not used --

A. And not?

Q. Used.

A. Yes.

Q. Would there be a different charge in that year, than if they had been used, let us say, extensively?

A. Now, we are dealing from the company's point of view only, because depreciation is a rather peculiar animal in that the Income Tax Department are very much interested in assets which are not used in the earning of the income. But, if you are dealing only with the company, the same rate of depreciation would apply to the assets which are used as to the assets which are not used.

Q. So that, in that year, under the straight line method, they have not valuated, or made any valuation of physical depreciation in respect to the group of assets which were not used in that year?

A. They have not made any --

Q. Any valuation of the physical depreciation

of that group of assets?

A. I think they will have because, in determining service life, use is not the only factor. These assets might depreciate much more by obsolescence, by the fact that they have not been used.

Q. So actually they are taken care of, should I say, by obsolescence and natural decay; but they have not any factor in there for use?

A. Oh, yes, they have.

Q. But in so far as they were not used, and there was a factor of use in the amount charged, the charge in that year was overstated.

A. That would not necessarily follow because, when the estimate was made in the first place as to how long that asset would last, all of the factors of use and obsolescence would have been taken into account. The engineer making that survey would know that in some years there would be less use of the assets than in other years.

Q. I am afraid we are at cross-purposes. I am trying to ascertain from you whether, under the straight line method, this engineering problem correctly reflects the amount of physical depreciation of any group of assets in a given year.

A. I would say it is supposed to, yes.

Q. I then put to you an example of a group of assets which, in a given year, are not used.

A. I appreciate that.

Q. You would not agree, I take it, that that would not correctly reflect the physical depreciation of the group of assets under the straight line method?

A. No, unless I knew exactly how the engineer, when he was making up his yearly life, what weight,

he put on the fact that in some years they would not be used. I think what you are trying to suggest to me is not that there is no user base for depreciation in that particular year.

Q. I am just dealing with straight line basis.

A. Straight line basis does not, as a separate entity, take care of use; but in my submission it is included in the survey which the engineer makes, when he determines the rate.

Q. Yes, the use to which the assets are put in any given year is an occurrence with him in that year?

A. It is an occurrence with him in that year and it is taken into consideration in determining straight line depreciation.

Q. And your proposition is that under the straight line it can be fixed so that the allocation properly reflects the use to which it is put in any given year?

A. Assuming that the engineer, in making his determination of rate, took those things into consideration.

Q. You know that railway equipment is used in varying intensity from year to year?

A. I do, Mr. Sinclair.

Q. It fluctuates widely?

A. That is right.

Q. And if there were a method of depreciation that could give due weight to that factor, it would be the preferable method to be used in railway accounting. Would you agree with that?

A. I assume that it would be preferable.

Q. It would be an advance of any method which did not give full weight?

A. I suggest that the other does give the weight.

We have to measure the effect of obsolescence as against use. I agree that the user rate determines more accurately on the use basis. Now, whether it also accurately reflects the obsolescent feature, I do not know.

Q. On page 2 of your supplementary brief I see this sentence:

> "We would point out that with an efficient maintenance program the use to which the assets is put may not be as important as the obsolescence which is accruing and which is usually measured by time rather than by use."

You would agree with me, would you not, Mr. Morrison, that it is taken for granted, in setting up your service life, that a full and proper maintenance program is going to be adopted?

A. Oh, yes.

Q. You support that proposition?

A. On any scheme of depreciation you will start off with the basis that there is a proper scheme of measuring your costs, and that it will affect the rate of depreciation.

Q. So that, therefore, assuming that proper maintenance is being done, then in fixing your service life you take into account the factors of wear and tear?

A. That is right.

Q. And they are important factors?

A. They are very important factors.

Q. Then why do you put so much stress on obsolescence?

A. Not "so much stress"; I have merely given it significance because I think that in this age we are

beginning to realize that obsolescence is probably a greater factor than even use.

Q. When the service life is fixed, it is fixed on the basis of past experience?

A. Yes, of course.

Q. Of judgment?

A. Of judgment.

Q. And in that is judgment as to the obsolescence factor for any group of assets?

A. I would think so.

Q. And another is the judgment as to the use to which the asset will be put over its life?

A. That is correct.

Q. Now, you have adopted the submission of Manitoba in regard to depreciation, as set out in their submission to this Commission, with certain modifications?

A. With observations, that is right.

Q. So you would agree that the definition as put forward by Mr. Glasgow in the 21 per cent case, which is quoted in the submission of Manitoba?

A. You mean the definition of depreciation?

Q. Yes.

A. Yes, without hesitation.

Q. And it is quoted at page 117 of the submission of the Canadian Pacific Railway Company, Part I?

A. That is right.

Q. Now, that definition, I think, should be read into the record:

> "Depreciation accounting is a system of accounting which aims to distribute the cost or other basic value of tangible capital assets, less salvage, (if any) over the estimated useful life of the unit (which may be a group of assets)

in a systematic and rational manner. It is a process of allocation, not of valuation. Depreciation for the year is the portion of the total charge under such a system that is allocated to the year. Although the allocation may properly take into account occurrences during the year, it is not intended to be a measurement of the effect of all such occurrences."

MR. FRAWLEY. I think you said it was Mr. Glassco's definition?

MR. SINCLAIR: I said: "First put forward by Mr. Glassco."

MR. FRAWLEY: But your brief indicates that it came from the American Institute of Accountants, and that it was drawn up by its committee on terminology.

MR. SINCLAIR: Quite so.

THE CHAIRMAN: Did Mr. Glassco adopt this language?

MR. SINCLAIR: Yes, Mr. Chairman, and it has now been adopted by Mr. Morrison.

THE WITNESS: That is quite correct. I adopt that definition.

MR. FRAWLEY: That makes it very clear.

MR. SINCLAIR: I am happy to have your concurrence, Mr. Frawley.

THE CHAIRMAN: Where is it?

MR. SINCLAIR: It is at page 117 of Part I of the submission of Canadian Pacific Railway Company, Mr. Chairman.

THE CHAIRMAN: Very well.

MR. SINCLAIR: Q. I take it, Mr. Morrison, that you say that straight line depreciation complies

with that definition?

A. That is a definition of depreciation accounting. Any method of depreciation can fit into that definition.

Q. So that the user method of depreciation also fits in with this definition?

A. Certainly.

Q. Now, you are not suggesting, are you, Mr. Morrison, that by statute, the method of depreciation that should be followed by the railways should be delineated?

A. No, no.

Q. That is a matter --

A. For the Board, the regulatory board.

Q. In conference with the railways?

A. There is no question but that they would do so.

Q. You think they should?

A. Yes, certainly.

MR. FRAWLEY: You would see to that, I think.

MR. SINCLAIR: I often wonder what Mr.Frawley would do under the circumstances. We would be quite prepared to give whatever assistance we could to the Board or to anybody else.

MR. SINCLAIR: Q. I have a statement here that I would like to have your views upon, Mr.Morrison, if I may. Dealing with depreciation, it says:

"If we keep searching for the best method of calculating depreciation for various industries, instead of accepting as universal the straight line basis, which at one time we came very close to doing, then we may find depreciation policies that are more realistically related to the way

business in those particular industries is done," and those charged for the use of equipment may be more nearly related to the income therefrom."

MR. FRAWLEY: I take it that you will tell the witness who is speaking?

MR. EVANS: Oh, he is putting it to the witness as a question.

MR. FRAWLEY: Of course you are. But aren't you going to tell the witness who said that?

MR. SINCLAIR: If Mr. Morrison tells me that he agrees with it --

THE CHAIRMAN: Who said it?

MR. SINCLAIR: That was a statement by Mr. George D. Bailey, Past President of the American Institute of Accountants.

THE WITNESS: Yes, I know Mr. Bailey.

MR. SINCLAIR: Q. Would you agree with that statement?

A. Might I have the opening words again, please?

Q. "If we keep searching for the best method of calculating depreciation . . ."

A. I follow that.

Q. ". . .for the best method of calculating depreciation by various industries, instead of accepting as universal the straight line basis which, at one time, we came very close to doing, then we may find depreciation policies that are more realistically related to the way business in those particular industries is done."

(Page 14507 follows)

A. I would not quarrel with the statement at all, Mr. Sinclair. I believe in being progressive in all things.

THE CHAIRMAN: Pardon me, Mr. Sinclair, what does it say we might find? We might find what?

MR. SINCLAIR: Depreciation policies.

THE CHAIRMAN: He does not say that he has found them, does he?

THE WITNESS: No, no.

MR. SINCLAIR: No, my lord. Now, - -

A. Did I finish? Have I finished my answer on that, Mr. Sinclair?

Q. I took it your answer was, that you agree to that statement?

A. No, I said I have no quarrel with the statement, and I am also hoping to be progressive and looking for new methods, but I am not subscribing that the present method of straight line does not reflect a proper charge for the use of the assets.

Q. You say that the straight line method is the most realistic method to apply as the depreciation policy of rail accounting?

A. Not necessarily the most realistic, not necessarily. I know of no better at the moment. There may be substitutes for it but I know of no better.

Q. Well, I want to ask you if it is the most realistic to be applied to the railway industry?

A. When you say most realistic it must be compared with something else.

Q. Well then, is it more realistic than the user method?

A. Not more, but just as realistic I think.

Q. Do you think it is wise from the

standpoint of the company that has wide fluctuations in its use of assets, to adopt the straight line basis?

A. Well, I have no quarrel with them adopting it, but on the other hand, I think the straight line method, in the long view, would give them just as good a result - from this point of view, Mr. Sinclair (because there must be a reason for that statement) that, referring to the matter of the lack of use of an asset, under the user method it attracts very little depreciation.

Q. Quite so.

A. Now, I can visualize that it might suffer great depreciation because of the lack of use. Now, a company must of course in its wisdom adopt whichever, after experience, is the better method.

Q. You know Mr. George O. May?

A. I met Mr. George O. May.

Q. Mr. May, I think, is the dean of American accountants?

A. He has been referred to as the dean of American accountants.

Q. Would you agree with that?

A. I am not in a position to or otherwise, I don't know.

Q. You will agree that he is an eminent authority?

A. Very much so.

MR. FRAWLEY: And a member of the Country Club.

MR. SINCLAIR: I did not know Mr. Frawley had so much time on his hands. I thought he was too busy.

THE WITNESS: That was last year.

MR. FRAWLEY: That was a couple of years ago.

MR. SINCLAIR: Mr. May has stated that the user method of depreciation is theoretically preferable and practically wiser in dealing with railway depreciation accounting.

THE CHAIRMAN: Practically what?

MR. SINCLAIR: Wiser. Do you agree with that statement?

A. Theoretically preferable and practically wiser? I could subscribe to it, yes.

Q. And Mr. May has also stated concerning the user method of depreciation as being applicable to railways, that it is an advance on the previous methods, having reference to the previous method being straight line. Would you agree with that?

A. Well, I have no knowledge really, because I have not made a study, but I will not quarrel wilh Mr. May's statement because no doubt he made a study when he made that statement.

Q. Now, you know Mr. Thompson?

A. Mr. J. C. Thompson?

Q. Yes.

A. Very well indeed.

Q. You would agree that he is an eminent qualified accountant?

A. Yes,

Q. Would you agree with this statement which was made by Mr. Thompson, that the user basis - -

MR. FRAWLEY: That is because he came from Alberta, isn't it?

MR. SINCLAIR: We will accept that. Q. Mr. Thompson made this statement, that the user basis is particularly applicable to a railway. Do you agree with that?

A. It can be particularly applicable to a railway, yes.

Q. He says, "is", "is particularly applicable". Would you agree with that?

A. Yes, I would not quarrel with that.

Q. Do you know Mr. Dalgleish?

THE CHAIRMAN: Does he say why it is particularly applicable?

MR. SINCLAIR: On the basis, my lord, that any railway traffic fluctuates to such an extent that the view expressed by Mr. Thompson was that under those circumstances the basis is particularly applicable.

COMMISSIONER INNIS: Could we have Mr. Thompson's qualifications put on the record?

MR. SINCLAIR: He is the senior partner in Canada of the firm of Peat, Marwick & Mitchell. I know Mr. Frawley knows he is from Alberta, and he likely knows all his qualifications, if he wants to put the qualificitions on the record.

MR. FRAWLEY: No, I am just worrying about Mr. Sinclair's paraphrasing of Mr. Thompson. I am a little bothered about that because it is all written down.

MR. MacPHERSON: Is Mr. Thompson giving evidence, because he gave evidence before the Board of Transport Commissioners.

MR. SINCLAIR: Mr. Thompson's qualifications

will be found at Page 14289 of Volume 77 of the 21 Percent. Case.

MR. MacPHERSON: My only point in rising, my lord, is this, that if Mr. Thompson's qualifications and a paraphrasing of his evidence in the 30 Percent. Case is given, then I think all his evidence should be in.

MR. EVANS: We would quite agree with that.

THE CHAIRMAN: Would you like to cross examine him?

MR. MacPHERSON: Yes.

MR. EVANS: My submission, my lord, about this is that in cross examination it should be open to counsel to put any questions that are relevant to an expert.

THE CHAIRMAN: I don't see any objection to that. I don't see any , wrong done so far.

MR. EVANS: No, sir.

THE CHAIRMAN: But I have asked Mr. MacPherson whether he would like to cross examine Mr. Thompson on the statement he has made which I think is a fair enough proposal. Is Mr. Thompson here?

MR. FRAWLEY: Yes, he is always here when there is a provincial accounting witness on the stand.

THE CHAIRMAN: We will hear from you again Mr. MacPherson.

MR. SINCLAIR: Do you know Mr. Dalgleish?

A. Mr. Ken Dalgleish?

Q. Yes.

A. I do.

Q. Would you agree that he is an eminently qualified chartered accountant?

A. I do.

Q. This is a statement Mr. Dalgleish made and I would ask you if you agree with it:-

"In my view the user basis of depreciation is eminently suitable for railroad accounting because railroads experience violent fluctuations in operation."

A. Yes, I would agree with that statement, and the similar statement made by Mr. Thompson, with my own reservation that I mentioned before, that in my opinion while they are still eminently adapted to those, consideration should be given to the depreciation that takes place when there is no use.

Q. Do you know Mr. Glassco?

A. I do.

Q. You will agree that he is an eminently qualified chartered accountant?

A. Yes.

Q. He has stated that the user method of depreciation for railways is an ideal method. His term is "ideal method", would you agree with that?

A. Yes, with the same qualification, Mr. Sinclair.

Q. Do you know Mr. Paul Grady?

A. I know of him, I don't know him, Mr. Sinclair.

Q. He is the partner of Price, Waterhouse & Company, New York.

A. So I believe.

Q. And you would agree that he is an eminently qualified accountant?

A. I would think so.

THE CHAIRMAN: Is there such a thing as this, that the assets of a railway might be divisible into two classes, in respect of some of which depreciation would be better accounted for by the time method, and others by the user method. Is that possible? The railway has all sorts of assets, and some of them are moveable and some are not.

A. That very situation, I think, presently exists in the case of the C.P.R., that they have their shop and power equipment on a straight line basis.

MR. EVANS: No.

THE WITNESS: I am sorry, Mr. Evans.

MR. EVANS: No, I would be glad to help your lordship on that. The only assets which we have on straight line depreciation, are inland steamships and work equipment, that is, equipment, used on the railway for work crews and material used in the process of maintenance and that kind of thing. Work equipment and inland steamships are on the straight line method. The rest are on the user basis including shop and power equipment.

THE CHAIRMAN: Those are the facts. My question to the witness is, in the case of the railways (and we have in mind these two large Canadian railways) is it not possible that their assets might be divisible into those whose depreciation would be determined on the user method and those where it would be determined on the time method?

A. On the time method.

Q. Is it worth while going into that, do you think?

A. It no doubt would be. There is certainly

the possibility. I have not given it a thought so I would not wish to express an opinion now, but it certainly might be possible.

Q. Well, think it over then.

MR. SINCLAIR: I just wish, my lord, to complete the reference to Mr. Grady and ask the witness if he would agree with this statement with reference to the user method in the railways, that it provides, in his words, "a more equitable charge against periodic income"?

A. I would agree, with the same qualification, the same reservation.

Q. Now, no matter whether you use the user method or the straight line method, the first problem is to ascertain the service life.

A. That is right, measured in one case in years and in the other case in units of service.

Q. And in determining the service life in the user formula, the first step is to determine the service life in years, is it not?

A. Well, I am not familiar with what the procedure is, Mr. Sinclair, how that was determined, because we were unable to get the information.

Q. Now, Mr. Morrison, would you not agree that the test of a depreciation method is by experience?

A. Oh, yes, I think that would follow.

(Page 14515 follows)

Q. So that if you have the experience, the method by which the depreciation rate was arrived at is not material, is it?

A. Yes, the method is still material.

Q. But the real test is experience?

A. Well, that is the most helpful thing in determining what the lifetime is, either measured in years or in units of service.

Q. Now, I take it, Mr. Morrison, that all assets depreciate?

A. Well, there is an exception accountingwise, Mr. Sinclair. Land usually does not depreciate in the accounts but it is an asset.

Q. Well, with that exception?

A. I think, generally speaking, that would be correct.

Q. And you would agree, or would you, that the realistic method would be to apply depreciation accounting to all depreciable assets?

A. Depreciation accounting, yes. Mr. Sinclair, it occurs to me I may have misled you there when we were speaking of depreciable assets. Now, there is an exception which comes to my mind now of rails and ties and these things which in railway accounting-while as an accountant we would regard them as depreciable but which has not been done in railway accounting.

Q. But road property with the exception of rails, ties, and ballast should have applied in your depreciation accounting?

A. Yes, but I inadvertently said yes with one exception, that of land. I had forgotten these others.

MR. FRAWLEY: Have you made it clear to the Commission what you mean by "exceptions"?

A. I think so, Mr. Frawley.

THE CHAIRMAN: You say such as railway ties?

A. They are not carried on depreciation. The first set is put in and after that they are on the renewal basis.

Q. Whenever they are worn out?

A. Yes.

MR. SINCLAIR: They are treated on a renewal basis, my lord, because they vary as nearly as can be 100 per cent with traffic. That is all I have, thank you, my lord. Thank you, Mr. Morrison.

THE CHAIRMAN: Anybody else?

COMMISSIONER INNIS: Mr. Morrison, could you give us any indication as to why the Bureau of Statistics (I think Mr. Sinclair made some reference to it) has not developed the statistics as fully as perhaps you would like?

A. Well, my only observation in that matter, sir, is that whatever the Bureau should require should be required from both the major railways on a uniform basis in order that when comparing the results, we would know that they are being properly comparable.

Q. But why has the Bureau not done that?

A. Well, I would not have any knowledge of that, sir; I don't know.

Q. You have not any criticism to make of the Bureau?

A. Oh no. From their point of view it may not have occurred that the differences were essential. Now, it is only when perhaps we get into a rate hearing that you find these differences which it is not desirable to have any doubt about as to their comparability. Perhaps in the ordinary everyday run of affairs these things may be quite

understood but when you come to a hearing where it is important that you should compare figures for different services, then I think it is most advisable, if possible, to have them on a properly comparable basis.

Q. Did the Board of Transport Commissioners set up an Economic Branch because of the deficiency of the Dominion Bureau of Statistics?

A. I have no knowledge as to that, sir.

CROSS-EXAMINATION BY MR. EVANS

Q. Having regard to Dr. Innis' question I just wanted to get clear on the record: were you intending to suggest that the operating statistics supplied to the Bureau of Statistics and published in their reports are not now comparable as between the two major railways?

A. No.

Q. When you spoke of statistics did you mean operating results, operating statistics?

A. I used the word "statistics" but in regard to operating results I would not suggest that they are not comparable, Mr. Evans.

Q. My information is that they are for operating statistics?

A. I would think that is probably true.

COMMISSIONER INNIS: One other point. I wondered what you meant by obsolescence. One gets the impression as a mere layman as Mr. Evans would say, that perhaps there is no such thing as obsolescence in railway equipment. There is the fact that during a period of heavy strain of traffic there will be whole cars brought back whether passenger or otherwise?

A. I would suggest, sir, that even if they are brought back, they are on the books at their original value and because of the fact that they are old fashioned, shall we say, they are not in use to earn the income in the same way that the more up-to-date cars are, so that while it is quite true that they may well be in service, their service is limited insofar as earning capacity is concerned.

Q. I was just wondering what illustrations you might have?

A. That comes to my mind at the moment, sir.

CROSS-EXAMINATION BY MR. SHEPARD

Q. Mr. Chairman, I have just one very brief question to ask Mr. Morrison. You have told Mr. Sinclair that you would favour depreciation accounting for a depreciable road, the classification of railway accounts known as "depreciable roads"?

A. Yes.

Q. And I presume your preference there would be on the assumption which is perhaps obvious that there are at the same time not being charged any renewals to current maintenance?

A. Oh yes, of course.

MR. EVANS: I think in view of that cross-examination that we should re-open the question in cross-examination because there is a suggestion here that was not dealt with when he was cross-examined before. If I might ask a question?

THE CHAIRMAN: Ask him again then.

MR. EVANS: Mr. Shepard has suggested to you that you might have a different view as to the practice of

depreciation accounting if you found that renewals were also being charged in regard to those assets?

A. Well, that was not as I understood the question, Mr. Evans. The question that I answered was "You favour depreciation accounting on depreciable roads?" and I answered "Yes".

Q. You would not expect -- what was your last question, Mr. Shepard?

MR. SHEPARD: I do not remember my last question but I just wanted to have that clear on the record.

MR. EVANS: As long as we understand each other. One is exclusive of the other?

A. That is right.

Q. Are we talking of units or portions of units when you say one is exclusive of the other?

A. I do not understand what you mean by "units".

Q. You are familiar with the Interstate Commerce Commission classification of accounts which provides for retirements on a unit basis?

A. Yes.

Q. And when you are speaking of the practice of depreciation accounting at the same time as there are renewals charged to expenses, I want to get it clear from you that you are speaking in terms of renewals of parts and not renewals of units?

A. Well, when I speak of depreciation on depreciable road, I mean that a service life, whether in terms of years or in terms of use will be ascribed to those assets and they will be depreciated annually on a depreciation accounting basis.

Q. But we are talking about this question of Mr. Shepard's which rather suggested that there were some qualifications in your view because of the suggestion that

perhaps renewal accounting was also practiced at the same time?

A. No, I leave my answer on that basis, Mr. Evans.

---At 12:55 the Commission adjourned to meet again at 2:45 p.m.

AFTERNOON SESSION

KENNETH JOHN MORRISON, RECALLED

EXAMINED BY MR. COVERT:

Q. Mr. Morrison, I wanted to find out first if it was the view of the Province of Alberta that a rate of return on investment is the best way of establishing a rate base, or if it is your view?

A. Well, it is the method that certainly in Alberta we are used to.

THE CHAIRMAN: Q. You say you are "used to." Used to in what?

A. In the province of Alberta in determining rate cases.

Q. For public utilities?

A. For public utilities, yes, sir.

Q. You are not talking of railways now?

A. No, sir, we have not had any railway hearings in the province of Alberta.

MR. FRAWLEY: We had some railways and we sold them to the Canadian Pacific.

MR. COVERT: Q. Perhaps I should not press that any further. I wondered if you would say that in your opinion that was the best way?

A. I think so, Mr. Covert, yes; that would be quite fair. It is a method which gives to the utility a rate of return, or a return rather on the investment in the utility.

Q. Now, on the question of apportionment of financial charges I was going to ask you if it is not true that the only or perhaps the main reason for the apportionment of financial charges in recent rate cases is the absence of a satisfactory rail investment figure on which to

establish a fair return?

A. I would think that is correct; that would be my view, yes.

COMMISSIONER ANGUS: Q. In Alberta have you ever had to deal with two competing public utilities so that you had two rate bases? I am thinking of the C.P R. and C.N.R.

A. No, we have not had that problem. Usually the rate hearings are restricted to the utility requesting an increase in rates, but I have had no experience where we had two utilities being considered at the same time.

MR. COVERT: Q. Mr. Morrison, in your view would uniform accounting lead to a more certain and perhaps more satisfactory measurement of rail earnings as well as giving a proper comparison between companies?

A. I think it would, yes.

Q. On this question of depreciation there are one or two questions I wanted to ask you, one under the group method of depreciation. Is it not true that an amount in excess of the original cost of a particular asset may be recovered if the service life is underestimated?

A. In the group?

Q. Yes?

A. Yes, in so far as a particular asset is concerned but not in respect of the aggregate of the group.

Q. And I suppose it is true to say or at least it can be argued that depreciation through use is in large part restored through current maintenance?

THE CHAIRMAN: Is in large part what?

MR. COVERT: Q. Restored through current maintenance?

A. Well, they run hand in hand, those two items, depreciation through use and the policy of maintenance.

Q. Now, I understand that most of the railway operating expenses vary with revenues and use, and one might say there is merit in having depreciation vary in a similar manner provided proper rates could be determined?

A. Oh, yes, and provided of course that all of these things are taken into consideration when determining the rate for a user basis.

Q. I suppose if you have fluctuating operating revenue and fluctuating operating expense you have a curve like that, perhaps two curves running somewhat close together. If you use the straight line method of depreciation you are apt to have in lean years perhaps too heavy depreciation to carry?

A. It is quite true in lean years where revenue is down the depreciation charge, which of course would be related to the use of the assets, would be more uniform than in the user basis when it would fluctuate.

Q. There were a few points I wanted to discuss with you concerning the classification of assets as between rail and non-rail. I wanted to get your views on a few of those, for instance, the Canadian Pacific Express Company. Do you think that should be included as rail or non-rail?

A. Well, I feel that it ought to be included as rail as the predominating operation is a rail operation.

Q. Then in connection with items such as money orders and so on, what would you do with them?

A. That at the moment has been regarded as a part of the express operation. I appreciate that could be divorced separately, and the point we made there was that if the regulatory board were to determine that should be so treated as Other Income or non-rail operations, that all of the expense properly attributable to that service

should be applied.

Q. Now, telegraphs, how would you treat that?

A. The same comment would be true there, that in the main that part that is rail should be considered as rail, and if the regulatory body decided there was a portion of it that ought to be regarded as non-rail operations because it might not be under regulation, then our observation is it should be seen that all expenses are properly attributed to both operations.

Q. You would segregate the operations of the telegraph company and divide them between rail and non-rail and apportion the expenses the same way?

A. That is correct.

Q. And how would you treat inland steamships?

A. Well, it is very difficult to distinguish that as being different from a rail operation. It appears to be a continuity of it or complementary with it.

Q. You would --

A. We would regard it as a rail operation.

MR. EVANS: Q. It is so regarded now, is it not, Mr. Morrison?

A. That is right.

MR. COVERT: Q. And motor bus and truck companies?

A. In the rail operations?

Q. Yes?

A. If they are under control of course they would be a part of the rail operations.

Q. Then do you fix as a yardstick the fact that they are regulated or controlled? Is that a test that you would apply?

A. That is a test that we felt could be applied, whether or not it was under regulation. If it was under regulation then it ought to be a part of the regulated operations.

Q. And hotels?

A. Hotels we have regarded as Other Income in recent hearings.

Q. Is it your view that is the correct way to deal with it?

A. I would think so, yes.

THE CHAIRMAN: Q. As Other Income?

A. As non-rail, perhaps I should say, Mr. Chairman.

MR. COVERT: Q. And how would you deal with grain elevators?

A. I would think grain elevators would be a rail operation.

Q. And what would your reasoning be in that case?

A. That it was connected very closely with rail operations. I realize, of course, in all of these decisions as to whether they are rail or non-rail it requires very extensive study, and I certainly have not given it that kind of study to give an opinion that might be of value to this Commission.

Q. I wondered if, for instance, grain elevators would really be more a part of the railway operation than hotels?

A. Well, that is, of course, just the difficulty that one finds one's self in, and that is why I felt if there was to be a review made by the technical advisers of the Commission that that matter would receive more careful study than certainly I have given to it.

Q. Now, dealing with stockyards, would you place them in the same category as grain elevators?

A. Yes.

THE CHAIRMAN: Pardon me, where is the revenue of grain elevators derived from, what class of people? You mean grain elevators belonging to the railway company?

MR. COVERT: Yes, that is what I am talking about.

THE CHAIRMAN: What about them? How do they operate? In one way you might say they are like freight sheds. They are storing goods being carried.

MR. FRAWLEY: We do not know very much about these grain elevators and I am sure Mr. Evans does not know all.

THE CHAIRMAN: In so far as you are concerned, Mr. Evans, are you paid for the storage of grain in one of your elevators?

MR. EVANS: Oh, yes.

THE CHAIRMAN: Under a tariff fixed by the Board of Grain Commissioners?

MR. EVANS: The Board of Grain Commissioners, not the Board of Railway Commissioners.

THE CHAIRMAN: The Board of Grain Commissioners have fixed a tariff there?

THE WITNESS: That is right, sir.

THE CHAIRMAN: You see there are two different boards there and it might make the question rather complex.

THE WITNESS: Yes, it does. It makes it very difficult to definitely determine, and that is why in our submission we suggested that the Commission should, if possible, make a recommendation that the regulatory board should determine what income should be designated as rail income and what income should be designated as non-rail income.

COMMISSIONER ANGUS: Q. Is the significance of this distinction in considering the level of rates the

fact that account would be taken of the profits of these undertakings if they were rail and not taken if they were non-rail?

A. That is correct.

THE CHAIRMAN: And their losses.

COMMISSIONER ANGUS: Their losses.

THE WITNESS: They would be really ignored by the regulatory body.

THE CHAIRMAN: Q. The losses would be ignored?

A. And the profits, yes, non-rail, that is.

COMMISSIONER ANGUS: Q. No, rail.

A. Rail would stand by themselves.

Q. Losses and profits on rail operations would come into the picture?

A. That is correct, sir.

(Page 14528 follows)

Would that make it extremely difficult to have compatability between two railways, if one had a great many of these enterprises and the other did not?

A. No. If the regulatory board laid down what was to be rail, then,naturally, if they did not come under that category, they would be non-rail.

Q. I am clear about that. But if you had to have the same rates for goods on the two railways?

A. Yes?

Q. And one is, let us suppose, making a large income from outside operations which are classed as rail operations, and if the other had no counterpart, would that not create a difficulty?

A. It ought not to, because they are both railway companies operating under regulation of the railway board, and that board states that revenue from that concern is to be considered in the determination of rates; and if one of the railways should have that kind of revenue, it ought not to make any difference.

THE CHAIRMAN: Q. One of the companies might not have a telegraph line?

A. That is true.

Q. Or it might not have any hotels?

A. That is right.

MR. COVERT: In what category would you put ocean steamships?

THE CHAIRMAN: What is the question?

MR. COVERT: Q. In what category would you put ocean steamships?

A. I find myself in the same difficulty there in distinguishing between inland and ocean steamships. At the moment we have certainly regarded them as being non-rail operation.

Q. Would you have any difficulty about such an investment, for example, as Consolidated Smelters?

A. In determining whether they were rail or non-rail?

Q. Yes.

A. I think we should have no difficulty because of the origin of the investment in that particular case. But again, it would appear that that is a non-regulated investment, so therefore it would be non-rail.

THE CHAIRMAN: You are talking of smelters, now?

MR. COVERT: Yes.

THE CHAIRMAN: There has been a lot said about it elsewhere. I would like to have it gone into quite thoroughly, because it might illustrate the whole situation for us.

MR. COVERT: Q. Mr. Morrison says there might be some difficulty because, I think he said, of the origin of the investment.

A. Yes, and the reasons for the origin of the investment.

THE CHAIRMAN: Q. What is the origin of that investment?

A. I do not think that I can speak with authority about it.

Q. You are referring to the origin?

A. Yes, but there was a reference made in the evidence. I did not give that evidence.

Q. I know; but somebody else did.

A. Yes.

Q. What is the evidence about the origin of this, do you remember?

A. I do not remember it sufficiently well to give

it without further reference to the evidence.

MR. COVERT: Q. Your point is, I take it, that ordinarily that would be regarded as non-rail?

A. That is right.

COMMISSIONER ANGUS: Q. Is the origin different from other non-rail items?

A. It would be the reason behind the investment, I would suggest.

Q. Or the motive?

A. Or the motive, yes.

THE CHAIRMAN: In arriving at the conclusion that it is not a railway matter were you influenced in that by the origin of the investment?

A. No, I was not.

Q. You are talking regardless of the origin?

A. Yes. By its nature it would be non-rail.

Q. A non-rail activity?

A. That is true.

MR. COVERT: Q. Have you given any thought to the matter as to what would be the real test as to whether it should be treated as rail or non-rail?

A. Well, no, I have not given it, perhaps, the study that would be necessary to make a recommendation as to the division of income between rail and non-rail.

Q. I was going to ask you if tests such as this, if it is integral with railway operations as such, or whether it is usually carried on by a railway, whether tests like that should apply?

A. I think they would be helpful. We have reduced it to the suggestion that if the revenue was under regulation, then it ought to be rail; but if it was not under regulation, then it should be considered as non-rail.

THE CHAIRMAN: Q. It depends then on whoever makes the regulations or gives the power to make the regulations. Is that a proper test, do you think?

A. I do not know that it is the only test, sir; but it is one which might be applied.

Q. Which might be applied is all right when you are comparing something; but, in the abstract, ought it to be regulated or not?

A. If it did not come under that particular tribunal for regulation --

COMMISSIONER ANGUS: Q. You mean, regulation by the Board of Transport Commissioners?

A. In this case, yes, sir.

Q. Not regulation by provincial authorities?

THE CHAIRMAN: You mean, regulation of that particular business itself?

A. That is correct.

Q. Its output, and the money it is allowed to earn, and so on; unless all that comes within the jurisdiction of the Board, then it is not a railway activity?

A. That would be my view.

COMMISSIONER INNIS: Q. And you would not be in favour of expanding the jurisdiction of the Board?

A. I did not give that consideration, Mr. Commissioner.

MR. COVERT: Under that test, how would you bring in grain elevators, for example?

THE CHAIRMAN: Q. Take the matter which Mr. Covert has in mind, the company with smelters; that company's operation is not governed by the Board of Railway Commissioners?

A. That is right.

Q. Its production, its output and its losses and

profits are all carried on independently of the Board?

A. That is right; and the revenue which the railway company would receive from them is outside of their jurisdiction, also.

Q. That is a necessary corollary?

A. Yes.

Q. Therefore you think it is non-rail?

A. That is right.

COMMISSIONER ANGUS: That test would be something different from leaving the Board free to determine what is rail and what is non-rail. If everything under its jurisdiction is rail, while everything which is not under its jurisdiction is non-rail, do you contemplate that the Board should be able to say that: Of the things under our jurisdiction, we think, some of them should be treated as non-rail.

A. That could follow all right; in other words, I visualize that the regulatory board should be in a position to lay down what items should properly come under their jurisdiction as pertaining to the railway operation.

COMMISSIONER INNIS: Q. But you would not favour increasing the power of the Board, or extending its jurisdiction so as to include possibly dubious items?

A. If that was the only way whereby they could have authority to review the situation, I should certainly say that it should be done.

THE CHAIRMAN: Q. How far would you go in doing that? Here is this concern, and all I suppose we know about it is that the company receives so much revenue from it because it owns it?

A. Yes; and if the regulatory board had the

power to examine into that investment, and was of the opinion that it was made because of the railway connection, and that it was something which enhanced the rail earnings of the company, then the Board might properly come to the conclusion that it ought to be regarded as railway earnings.

Q. And, if there were a loss, it would be carried as a railway loss, I suppose?

A. Yes, sir, of course. It would have to work both ways.

Q. Would that be a desirable thing in the case of this particular concern? Do you know enough about it to tell us that?

A. No, sir, I do not know sufficiently about it.

MR. COVERT: Q. If you applied that same test, you could, in fact, bring in any kind of operation, as long as the railway had power to conduct it. You could bring in hotels that way.

A. If the Board was of the opinion that hotels were properly a rail operation, yes; the regulatory board, I mean.

Q. Would it need to go that far? Supposing the company acquired, because they thought it might help their railway. Then, later on, the Board could say that, I understand, from your test: Here, we will look at hotels and why they acquired them; and therefore we will say this is a rail operation.

A. I think it is only a regulatory board that could come to a proper conclusion after study.

Q. You think there should be some rules to guide the Board? Should they be able to say that anything which the railways carry on might properly be railway account?

A. I will not suggest that there should be rules laid down specifically in any document, because it might prove to be too restrictive both ways.

THE CHAIRMAN: Have you got a copy of the judgment in the 21 per cent case, Mr. Frawley?

A. Yes, I have, sir.

THE CHAIRMAN: Might I see it?

MR. COVERT: That is all, thank you, Mr. Morrison.

RE ~~CROSS~~-EXAMINATION BY MR. FRAWLEY:

MR. FRAWLEY: Q. Mr. Morrison, Mr. Sinclair this morning was calling to your attention the opinions given in the rate cases by experienced chartered accountants with respect to the user method of depreciation. He called your attention particularly to what Mr. J. C. Thompson said, and he quoted a phrase which Mr. Thompson used in his evidence when he said that:

> "The user basis is particularly applicable to a railway."

Do you recall Mr. Thompson giving evidence in the rate cases?

A. I do.

Q. And do you recall Mr. MacPherson's cross-examination of Mr. Thompson with respect to his knowledge of the use of the user method in railway accounting?

A. I recall Mr. Thompson's evidence, yes.

Q. Do you recall that Mr. Thompson told us that his company, the Peat, Marwick & Mitchell Company had branches pretty well throughout the world?

A. Yes.

Q. And do you recall that Mr. MacPherson was

anxious to have Mr. Thompson tell the Transport Board, if he could, what railways, within the knowledge of his firm, had adopted and were following the user method of depreciation?

A. Yes, I recall that evidence.

Q. Do you recall whether Mr. Thompson came up with any instance of a railway using the user method of depreciation?

MR. EVANS: Mr. Chairman, this is the most leading re-examination I have ever heard in my life.

If my learned friend wants help from the transcript, I have no objection. But for him to put to this witness his recollection of something which occurred in the transcript, and to lead him right up to an answer of yes or no right through his examination, I would say was the most objectionable kind of re-examination.

THE CHAIRMAN: Have you got the transcript there, Mr. Frawley?

MR. FRAWLEY: No, I have not, Mr. Chairman. Perhaps I should not proceed in pursuing this examination. But I merely wanted to bring something to the attention of the Board.

However, I shall bring the 21 per cent case transcript here. I thought there would be no objection. Mr. Evans knows perfectly well what Mr. Thompson said about it. But I suppose there is a proper way of bringing in the evidence, so I shall put into the transcript what Mr. Thompson said, to his knowledge, what railways were following the user method of depreciation.

MR. FRAWLEY: Do you know of any railway other than the Canadian Pacific Railway that is using the user method of depreciation?

A. No. And when I say that, I only know from the evidence given by Mr. Thompson.

THE CHAIRMAN: Are you confining this question to railways in Canada?

MR. FRAWLEY: No; to railways all over the world.

THE WITNESS: In so far as Canada is concerned, I know of no other than the Canadian Pacific Railway, and from the evidence given by Mr. Thompson there was one other, I believe, a subsidiary of a salt or sugar company in Cuba, which was using the user basis of depreciation.

MR. FRAWLEY: Thank you, Mr. Morrison.

----Witness retires.

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MR. COVERT: My lord, the next submission is that of the Province of Nova Scotia.

THE CHAIRMAN: Well, we will now take up the Nova Scotia case, the continuation.

MR. SMITH: If your lordship pleases, I am appearing on behalf of the Government of the Province of Nova Scotia. I have as witnesses Mr. Rand Matheson and Mr. Harold Egan. Insofar as Mr. Matheson is concerned, he has been before this Royal Commission on many occasions, and I am relying upon the evidence he has already given insofar as most of my submissions are concerned with relation to rates. I am going to call Mr. Egan with respect to financial matters.

THE CHAIRMAN: You are going to call Mr. Egan?

MR. SMITH: Yes, sir, but I think before calling Mr. Egan, I should make some passing comments upon my submission. My submission is somewhat different from the ones that have gone before me inasmuch as I am not relying for any factual information, apart from the evidence of Mr. Matheson, upon any viva voce testimony. I am referring to reports which have been made on the economy of Nova Scotia and also the report which was made by the Sirois Commission. Apart from that I have no witnesses, no economic witnesses on general principles of economy or matters of that kind which I will adduce by way of viva voce testimony. So perhaps it would save time if I asked first that my submission be read into the record.

MR. COVERT: Taken as read?

MR. SMITH: Taken as read.

- - - following is the:- SUBMISSION OF THE GOVERNMENT OF THE PROVINCE OF NOVA SCOTIA TO THE COMMISSION.

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SUBMISSION OF THE GOVERNMENT OF THE PROVINCE OF NOVA SCOTIA TO THE ROYAL COMMISSION ON TRANSPORTATION

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SUBMISSION OF THE GOVERNMENT OF THE PROVINCE OF NOVA SCOTIA TO THE ROYAL COMMISSION ON TRANSPORTATION

I

The Province refers to Appendix I of the Report, dated September 13, 1932, of the Royal Commission to inquire into Railways and Transportation in Canada, of which the Right Honourable Sir Lyman Poore Duff, P.C. was Chairman. The Report is commonly referred to as the Report of the "Duff Commission". Appendix I contains a concise and accurate statement of the growth and development of transportation in Canada from early days until the date of the Report.

Reference is made in Appendix I to the transportation developments since the first Great War. The expansion of facilities so far as they had to do with the two principal railway systems are fully dealt with in the Report proper and Appendix I deals briefly with the subsequent developments in related fields, such as waterways, airways and roadways.

There has been, since the making of the Report of the Duff Commission in 1932, much greater use of motor coaches and trucks on highways. The competition between highway transportation and railway transportation has greatly increased and will inevitably continue to increase. There has also been a substantial increase in the aerial transportation of passengers, freight and mails. Goods are also sent by air express.

The record of what is termed "the extraordinary development of railways in Canada" is set out

in detail in Book I of the Report of the Royal Commission on Dominion-Provincial Relations, and in Book II of that Report "the astonishing growth of railways in Canada", the extent of net capital expenditures in the period 1923-1935 inclusive and the burdens of capital investment "of staggering proportions" are adverted to. (p. 203). The increase of truck competition is also discussed on pp. 203-206 of Book II of the said Report.

In the absence of the existence of an exhaustive study of the problems affecting transportation generally in Canada, there are, in this Brief, except with reference to the various topics hereinafter discussed, no specific submissions in respect of the question of transportation as it affects Canada generally. It is realized that the Commission will make a thorough and complete inquiry into the matters involved in the general problem. Until such an inquiry has been made, we must, of necessity, confine our specific submissions to the matters set out in the terms of reference contained in Paragraph 2 of Order-in-Council P.C. 6033.

II

We now refer to the transportation problems relating to Nova Scotia, having regard to the handicaps imposed on our economic life by geography and by transportation and other policies in Canada.

The Province adopts, as its own, the following passages from the Report of the Royal Commission on Maritime Claims, dated September 23, 1926, of which Sir Andrew Rae Duncan was Chairman. This Report is generally known as and will be referred to hereinafter as the "Duncan Report".

"II. TRANSPORTATION AND FREIGHT RATES

7. Maritime Railways.

For all practical purposes, the rail transportation services of Nova Scotia and Prince Edward Island are controlled by the Canadian National Railways. The other great transcontinental system, the Canadian Pacific Railway, has its Atlantic terminus at Saint John, N.B., and serves the Province of New Brunswick in direct line, and on small branches. The Canadian National Railways also have a main line direct through New Brunswick, and handle the greater portion of the tonnage of the three Maritime Provinces taken together -- for example, it is estimated that the system handles between 70 per cent and 80 per cent of the total tonnage of the three provinces. Partly for this reason, and partly also on account of the history of the Intercolonial Railway (which forms the greater part of the Maritimes portion of the Canadian National Railways), evidence submitted to us related almost entirely to the Canadian National Railways system.

8. History of Intercolonial Railway.

The construction of the Intercolonial Railway was an obligation placed upon the Dominion Government by section 145 of the British North America Act, 1867, which reads as follows:-

"Inasmuch as the Provinces of Canada, Nova Scotia and New Brunswick have joined

in a Declaration that the construction of the Intercolonial Railway is essential to the Consolidation of the Union of British North America, and to the Assent thereto of Nova Scotia and New Brunswick, and have consequently agreed that provision should be made for its immediate construction by the Government of Canada: Therefore, in order to give effect to that agreement is shall be the duty of the Government and Parliament of Canada to provide for the commencement within six months after the Union, of a railway connecting the river St. Lawrence with the city of Halifax in Nova Scotia, and for the construction thereof without intermission, and the completion thereof with all practicable speed.'

For many years before Confederation the project of such a railway was actively canvassed both in the Maritime Provinces and in Upper and Lower Canada, not only as an element in the political consolidation of the four pprovinces but even as a channel of mutual commerce and trading. The Maritime point of view is fairly reflected in the following quotation from the arguments of a Nova Scotian delegation in 1857:-

'An Intercolonial railroad would give the means of communication at present wanting. It would open to Canada an Atlantic seaboard on British soil, from

which she is now cut off; and would offer to the Lower provinces a ready access to the vast field of enterprise and progress occupied by their fellow subjects in the interior. It would prove a benefit of incalculable value, should it be the precursor of, as it is an absolute necessity towards, a legislative union of Her Majesty's North American provinces -- a measure essential to the full development of the power which their situation and character are calculated to confer, and without which they never can attain the high position to which their united energies and advantages would lead them.'

It is unnecessary to pursue the arguments in detail. From some angles it could, no doubt, be urged that the construction of the railway was as much a concession to the demands of the Maritime Provinces as an inducement held out by the other provinces to make Confederation more attractive to the Maritimes. We think, however, that a balanced study of the events and pronouncements prior to Confederation, and its consummation, confirms the representations submitted to us on behalf of the Maritime Governments in regard to the ultimate construction of the railway, viz:-

(a) That leading Canadian statesmen in urging the adherence of the Maritime Provinces to Confederation defined

the purposes of the railroad to be

(i) A means of affording to Canadian merchandise, and to Canada herself in times of national and imperial need, an outlet and inlet on the Atlantic ocean -- available all the year round -- and

(ii) To afford to Maritime merchants traders and manufacturers, a market of several millions of people instead of their being restricted to the small and scattered poulations of the Maritimes themselves, particularly in the light of the disturbance with which their trade was threatened as the result of the discontinuance by the United States of the reciprocal arrangements that had prevailed.

(b) That strategic considerations determined the actual course of the line -- making it many miles (estimated by Sir Sandford Fleming at 250 miles) longer than was necessary -- if the only consideration had been 'to connect the cities of the Maritime Provinces with those of the St. Lawrence.'

(c) That to the extent that commercial considerations were subordinate to national, imperial and strategic con-

siderations, the cost would be borne by the Dominion and not by the traffic that might pass over the line.

9. Rate Structure of Intercolonial Railway.

The Intercolonial Railway was completed in 1876, and it would appear from the evidence we have received that from then until 1912 the interests of the Maritime Provinces were fairly well safeguarded, the freight rate structure being such as to take into account the requirements of their traffic. The lower level of rates that prevailed on the Inter-colonial Railway system prior to 1912 is, in our view, rightly to be interpreted as the fulfilment by successive governments of the policy and pledges that surrounded the railway from its inception, whatever impressions may have been created by the form of its administration.

Since 1912, changes have taken place in the framework of the rate structure, and increases have been added to the freight rates. The combined effect of these has been to impose upon the merchandise and industry of the Maritimes, a burden which, it is alleged, is quite out of proportion to the increase which has been added since 1912 to the freight structure in other parts of Canada, although it may, in many cases, only have raised Intercolonial Railway rates to the same level of scale as rates in other places.

The net result of these changes is broadly

shown by the figures given in evidence by the railway administration who, at our request, furnished us with statistics to show the position now as compared with 1912 for the Intercolonial Railway and for the rest of Canada. These figures reveal that Intercolonial rates have suffered an estimated cumulative increase of 92 per cent (i.e. their 100 has become 192). The estimated average increase of rates for the rest of Canada is 55 per cent (i.e., their 100 has become 155).

10. Effect of changes in Rate Structures on Maritimes.

The Maritimes case on railway rates was put to us in very considerable detail. The Railway Commission is at the present time dealing with these same details, and we have not formed any opinion on these matters so far as a judgment on their merits would involve consideration of railway administration and policy. On the broader question, however, of the incidence of the existing rates as a whole upon industry and employment in the Maritimes, we have come very definitely to the conclusion that the rate structure as it has been altered since 1912 has placed upon the trade and commerce of the Maritime Provinces, (a) a burden which, as we have read the pronouncements and obligations undertaken at Confederation, it was never intended it should bear, and (b) a burden which is, in

fact, responsible in very considerable measure for depressing abnormally in the Maritimes to-day business and enterprise which had originated and developed before 1912 on the basis and faith of the rate structure as it then stood".

We have referred to Appendix I to the Report of the Duff Commission and the following references to the Intercolonial Railway at pages 76 and 77 are, it is sybmitted, apposite in this connection:-

"INTERCOLONIAL RAILWAY

The promise of railway construction formed an integral part not only of the arrangement of 1867 but also of the terms on which Prince Edward Island and British Columbia later entered the Dominion.

.....

The failure of the early attempts to secure a line from Halifax to Quebec has already been mentioned. One of the arguments which successfully carried the confederation project in the Maritime provinces was that a railway joining them to Central Canada could and would be built. The promise was written into the Act of 1867 (Section 145) and the long cherished hope soon became a reality.

"For this formidable undertaking, there was selected, largely at the instance of the Imperial Government, which had agreed to guarantee a loan, the long circuitous route of the Royal Engineers' Survey of 1847. This route, its supposed military advantage emphasized by certain incidents of the American Civil War, represented the most distant practicable arc from the American border. In other respects, however, the so-called military survey suffered by comparison with the more direct routes -- one approximating that of the National Transcontinental of nearly fifty years later, another projected to descend the fertile valley of the St. John. Thus excessive length and costly construction were added to the economic difficulties of bridging the unproductive gap between Central Canada and the Maritimes, and any real prospect of profitable operation was excluded from the start.

"Completed in 1876, from Truro where it connected with Halifax, to Riviere du Loup where the Grand Trunk gave it access to Quebec and Montreal, the Intercolonial added some 700 miles of railway, and its cost brought the amount to which public credit was involved in railway construction at that time, to considerably over $100,000,000. Subsequent extensions, and operation by the government upon a generally unprofitable basis have since added greatly to the investment represented by the Intercolonial. The line constituted in its inception, however, and remains today an essential national undertaking.

Besides forming the original link in what has since become the extended and multiple chain of railway communication that connects from east to west the geographically disjointed belt of Canadian Confederation, the Intercolonial continues to serve as the principal purely Canadian outlet, available throughout the year, to the Atlantic seaboard. So if today the Intercolonial, forming with the National Transcontinental Railway the eastern lines of the Canadian National System, seems to present many of the aspects of commercial failure, it should be remembered that its economic defects are to a great extent inseparable from an origin that had its roots, and remains rooted, in the broader considerations of public policy."

The Duncan Commission made the following recommendations on freight rates:

"We conceive this to be a position with which -- quite apart from details of particular rates -- it is our function to deal, and a position which must be dealt with drastically and promptly. We take this view the more readily since the President of the Canadian National Railways system did not dissent from Sir Sandford Fleming's railway estimate that, for strategic reasons, the International had followed a course approximately 250 miles greater than would have been followed had it been built merely for commercial purposes. He further explained that, owing to grades and curvature, the operating and maintenance expenses of this branch of the railway were much greater than the average of the rest of

the system, and, still further, that winter conditions in the maritime provinces necessitated special expenditure arising from snow and ice conditions -- and consequent delays in traffic transit -- much in excess of what were experienced in other parts of the system. It is true that the operation of the Atlantic Division has shown an operating deficit in recent years in spite of the higher rate structure (including general war increase) that has been imposed on it since 1912. But there are many considerations to be taken into account in considering that deficit. For our present purpose, it is more material to notice that the President of the Canadian National Railways admitted in evidence, that in administering the Atlantic Division (the greater portion of which is the old Intercolonial system), no account is being taken in the rate structure of to-day of the special considerations which attach to it as revealed in the pledges and pronouncements already referred to. We feel that the increase arising from the changes that have taken place in freight rates since 1912 -- over and above the general increase that has taken place in other parts of the National system -- is as fair a measure as can be made of these special considerations, and accordingly should be transferred from the Maritimes to the Dominion so that the original intention may be observed.

"We recommend, therefore, that an immediate reduction of 20 per cent (so that 192 will become approximately 155) be made on all rates charged on traffic which both originates and terminates

at stations in the Atlantic Division of the Canadian National Railways (including export and import traffic by sea, from and to that division), and that the same reduction be also applied to the Atlantic Division proportion of the through rates on all traffic which originates at stations in the Atlantic Division (excluding import traffic by sea), and is destined to points outside the Atlantic Division.

"For this purpose, we cannot regard the Atlantic Division as ending at Riviere du Loup and Monk, which are its present western limits. The divisional points should, in our view, be Diamond Junction and Levis, Diamond Junction being the point at which the Transcontinental Railway meets the old Intercolonial Railway, and Levis the point to which, in 1879, the Intercolonial Railway was extended.

"It might be contended that a flat rate reduction of the amount we name, and in the manner we name, is open to the objection, that it does not restore the pre-1912 relativity of rates within the provinces themselves, and that it is not an accurate assessment of the charges that arise from the considerations in mind. We do not believe -- and the Canadian National Railways have informed us that they also do not believe -- that any more accurate or equitable result could be obtained by minute and scientific investigation, which would, in any event, take an indefinite time to conduct. The situation is one that can only be dealt with in a broad spirit, and one that for the economic welfare of the Maritimes

must be met without delay. The course we suggest has the effect of giving immediate relief in a manner that is equitable as well as broad. The cost of this relief should be definitely borne by the Dominion Government, who will make the necessary reimbursement to the Canadian National Railways through the medium of the Canadian National Railways budget, without impairing the financial results of the operation of the system. We are not overlooking that the other great railway system operating in the area would be entitled to equitable consideration if they find themselves prejudiced as a result of the reduction proposed."

(Para. 11, pp.22-23, Duncan Report)

The Duncan Report was implemented in respect of the foregoing recommendations by the passage of the Maritime Freight Rates Act, 1927.

The statute was originally enacted as Chapter 44 of the Statutes of Canada, 1927 (17-18 Geo.V). On the revision of the statutes, it became Chapter 79 of the Revised Statutes of Canada, 1927.

The Act, as passed, contained the following preamble:

"Whereas the Royal Commission on Maritime Claims, by its Report dated September 23rd, 1926, has, in effect, advised that a balanced study of the events and pronouncements prior to Confederation, and at its consummation, and of the lower level of rates which prevailed on the Intercolonial system prior to 1912, has, in its opinion, confirmed the representations submitted

to the Commission on behalf of the Maritime Provinces, namely that the Intercolonial Railway was designed, among other things, to give to Canada in times of national and imperial need, an outlet and inlet on the Atlantic Ocean, and to afford to Maritime merchants, traders and manufacturers the larger market of the whole Canadian people instead of the restricted market of the maritimes themselves, also that strategic considerations determined a longer route than was actually necessary, and therefore that to the extent that commercial considerations were subordinated to national, imperial and strategic conditions the cost of the railway should be borne by the Dominion, and not by the traffic which might pass over the line. And whereas the Commission has, in such Report, made certain recommendations respecting transportation and freight rates, for the purpose of removing a burden imposed upon the trade and commerce of such Provinces since 1912, which the Commission finds, in view of the pronouncements and obligations undertaken at Confederation, it was never intended such commerce should bear; And whereas it is expedient that effect should be given to such recommendations in so far as it is reasonably possible so to do without disturbing unduly the general rate structure in Canada."

The Act has been considered and construed or applied by the Supreme Court of Canada in the following cases:

C.N.R. v. Nova Scotia et al (1928) S.C.R. 106; (1928) 1 D.L.R. 369.

In the Matter of the Maritime Freight Rates Act (1933) S.C.R. 423; (1933) 4 D.L.R. 764; 41 C.R.C. 56.

Province of Nova Scotia v. C.N.R. et al (1937) S.C.R. 271; (1937) 3 D.L.R. 126.

It is not considered to be necessary to set out in this brief the provisions of the Act in their entirety as in Appendix I to the submission of the Government of the Province of New Brunswick the Act, as it appears in Chapter 79 of the Revised Statutes, 1927, is found. The Province, therefore, craves leave to refer to Appendix I of the New Brunswick submission.

The statute directs the maintenance of tariffs of tolls on the lines of railway operated as parts of the Canadian National Railways, therein designated as the "Eastern lines", on the general rate level of approximately 20% below the tolls or rates existing on the 1st of July, 1927, while the cost of railway operation in Canada remains approximately the same as at the said date on the "preferred movements" as therein defined. "Eastern lines" are the lines of railway situated within the Maritime Provinces and the lines of railway in the Province of Quebec extending from the southern provincial boundary near Matapedia and near Courchesne to Diamond Junction and Levis. (Sections 2 and 3.)

The Board may allow the increase or reduction of such tolls or tariffs from time to time to meet increases or reductions, as the case may be, in such cost of operations. (Section 3, subsection 2, (b).)

The Board is authorized and directed to adjust or vary such substituted tolls or rates from time to time as new industrial or traffic conditions arise, but always in conformity with the intent of the Act as expressed in Sections 7 and 8 and other relevant Sections thereof. (Section 3, subsection 2, (c).)

The "preferred movements" to which the reduction applies include:

(a) All rail traffic between points on the Eastern lines;

(b) All rail traffic moving outward, westbound from points on the Eastern lines to points outside, the 20% reduction being based on the Eastern lines' proportion of the through rate;

(c) Export traffic moving outward, rail and sea, from points on the Eastern lines through ocean ports on the Eastern lines destined overseas.

(Section 4.)

The following are not "preferred movements":-

(a) All rail traffic moving inward or outward to and from the United States;

(b) All rail traffic moving inward eastbound from Canada;

(c) Import traffic to Canada originating at point overseas; and

(d) Passenger and express movements.

(Section 5.)

By Section 7, the rates provided for in respect of preferred movements are deemed to be statutory rates, not based on any principle of fair return to the railway for services rendered in the carriage of traffic, and it is declared therein that no argument shall accordingly be made nor considered in respect of the reasonableness of such rates with regard to other rates, nor of other rates, having regard to the rates authorized by the Act.

Section 8 provides that the purpose of the Act is to give certain statutory advantages in rates to persons and industries in the three Provinces of New Brunswick, Nova Scotia and Prince Edward Island and, in addition, upon the lines in the Province of Quebec already mentioned, therein called "select territory", and that accordingly the Board of Railway Commissioners (now the Board of Transport Commissioners) shall not approve nor allow any tariffs which may destroy or prejudicially affect such advantages in favour of persons or industries located elsewhere than in the "select territory".

While the term "Eastern lines" as used in the Act referred to the said lines of the Canadian National Railways, by virtue of Section 9, other companies owning or operating lines of railway extending into the "select territory" may file with the Board tariffs of tolls respecting freight movements similar to the "preferred movements", meeting the statutory rates referred to in Section 7 of the Act;

and the Board, subject to all the provisions of the Railway Act respecting tariffs of tolls, not inconsistent with the Maritime Freight Rates Act, 1927, shall approve the tariffs of tolls filed under Section 9.

The Act, therefore, is mandatory on the Canadian National Railways but is permissive insofar as other railway companies operating lines extending into the "select territory" are concerned.

The Act provides for the reimbursement by the Dominion Government to the railway companies of the difference between the tariffs under the Act and the normal tariffs which, but for the Act, would have been effective. (Sections 6 and 9.)

It should be pointed out that, in addition to the above quoted recommendations on freight rates made in the Duncan Report, it is stated in the Report that there were other considerations which should be taken into account. We refer to the following passages:-

> "The immediate operation of this reduction will not withdraw from the purview of the Railway Commission the detailed claims which are already before them in respect of Maritime rates. It will only have the effect of withdrawing from the Railway Commission any review of these claims in so far as they are supported by arguments that relate to the considerations to which we have alluded in recommending the reduction. Considerations such as attach only to individual claims, or to the general question as to whether or not railway companies should give better treatment than they are giving to long-distance traffic, particularly on natural products and associated enterprise, and to export and import rates from

[illegible]

and to points outside the Maritime area passing through Atlantic ports, are still open for review by the Railway Commission."

"Even with this larger question out of the way, there still remain certain problems in connection with railway administration that, while they have a general application over the whole system, have a special bearing on the position of the Maritime Provinces. The President of the Canadian National Railways system agreed that it was part of his function, as head of the railway system he was administering, to make a survey of the natural basic products of the country, and to try within broad limits to adjust his rate structure so as to give the fullest chance of development to all natural products in whatever region of his system they are located. He likewise regarded it as his function to make a survey of the industrial possibilities of the whole territory covered by his system, to see whether industries placed at a distance from a central market, particularly when they were capable of development which might ultimately render them either directly or through associated enterprise, remunerative to the railway, were given a reasonable chance of finding their market. Considerable evidence was placed before us on the part of the Maritime Provinces, to indicate that in both these respects they suffered handicaps under the present structure of rates -- even apart from the special features attaching to the railway system of their area for which we have already recommended provision."

[illegible] the Maritime area regular [illegible] by the Railway Commission."

[illegible] with [illegible] question out of the [illegible] in [illegible] they have a general application over the whole system, have a special bearing on the position of the Maritime Provinces. The President of the Canadian National Railways system answered that it was part of his function, as head of the railway system he was administering, to make a survey of [illegible] to the within broad limits to adjust his rate structure so as to give the fullest chance of development to all natural products in whatever section of his system they are located. He likewise [illegible] of the industrial possibilities of the whole territory covered by his system. To see whether industries placed at a distance from a central market, particularly when they were notable or [illegible] present w[illegible] [illegible] commercially to the railway, were given a [illegible] [illegible] evidence was placed before us on the part of the [illegible] these witnesses that [illegible] under the present commercial or rate -- even great [illegible] the material resources adjacent to the railway [illegible] of their area -- which we have placed [illegible].

"In addition, the cases which the Maritime Provinces have already submitted to the Railway Commission also raise the question of handicaps arising from the geographical position of their natural products, and their distance generally from central markets. If we were satisfied that under their present power the Railway Commission could adequately deal, on appeal, with the broader aspect of the Maritime cases before them, we would make no further comment. Previous judgments of the Railway Board, however, lead us to fear that they will not feel competent to deal with such broad considerations as are still involved in these Maritime claims."

"The conclusion to be drawn from these extracts seems to us to be that the Railway Commission does not feel itself empowered to pass under its review, when appeals are made to it, the same wide range of business considerations which railway companies themselves can take into account in forming a judgment as to the extent to which they should develop trade and business."

"We are far from suggesting that there should be arbitrary interference on the part of the Railway Commission with the business judgment of the railway companies, or that there should be any confusion between trade development that can reasonably be expected from a railway rate structure, and trade development that must be a matter for public or government responsibility quite apart from rate structure."

"At present the work of the Railway Commission is circumscribed within the two considerations, viz:-

(a) Reasonable compensation to the carrying company, and

(b) No unfair preference or unjust discrimination as between traders.

Section 320 of the Railway Act seems to give the wider powers that we have in mind to the Railway Commission, so far as the question of undue preference or unjust discrimination may be involved:-

> '320. In deciding whether a lower toll, or difference in treatment, does or does not amount to an undue preference or an unjust discrimination, the Board may consider whether such lower toll, or difference in treatment is necessary for the purpose of securing, in the interests of the public the traffic in respect of which it is made, and whether such object cannot be attained without unduly reducing the higher toll.'

Even there we feel that, if the intention was to have larger national interests in mind, the section should be made clearer, and instead of the words 'in the interests of the public' (which might be interpreted as in the interests of the 'consuming' public), the words should clearly state that it is national interests (both 'producing' and 'consuming') that are in mind. If this was not the original intention of the section, we suggest it is the intention which should now be imported into it. We feel further that a similar extension of authority should be imparted to the Railway Board in regard to the question of reasonable compensation. It would then be competent for the Railway Board to make a survey of just the very character that the President of the

Canadian National Railways testified as being part of his function (as the business head of a railway); and if from public policy they felt that an experimental rate should be conceded, they should be free to constitute the rate, even although it might not, at the time, or of itself, give reasonable compensation to the railway company.

We recognize, however, that amongst the business considerations which must always be taken into account in a review of this kind are:-

(a) A proper balancing of the structure of railway rates so that on the whole (though not in a particular item of business) there would be not only reasonable compensation to the railway company for the carrying services it renders but such reasonable compensation over all as to permit of a certain amount of trade development.

(b) A means of ascertaining whether, in fact, the rate asked for is necessary to the producing or trading interest, bearing in mind that a reduced rate may be pressed for when trading results might show it was not required, or on the other hand, when trade could not be very much developed even if the rate asked for were conceded.

If the Railway Board is to be vested -- and we think it should be -- and we recommend that it should be -- with somewhat fuller supervisory responsibility that we have indicated, we think it should also be vested -- and recommend accordingly-- with power, in weighing an application that raised these considerations, to order an accounting

investigation at their own hand, into the incidence of the railway charge on the costs of production of the commodity, and its relationship to other costs, and to the general trading results of the interest involved."

(pp. 23-25, para. 12.)

The Supreme Court of Canada, in its Judgment, delivered by Duff, C.J., in Re Maritime Freight Rates Act (1933) S.C.R. 423, thus construed the provisions of Sections 7 and 8 of the Maritime Freight Rates Act, 1927:-

"There can, we conceive, be no question as to the scope of sections 7 and 8. They apply to all rates 'specified in the tariffs of tolls in this Act provided for'. They apply to the substituted tariffs which are to be 'prepared and submitted to the Board' immediately upon the passing of the Act. They apply also, and this it is important to emphasize, to these tariffs, as varied and adjusted (under subs. 2 (c) of s.3) 'as new industrial or traffic conditions arise'. By the explicit terms of s. 9 (2) they apply to the tariff tolls to be approved under that section. In performing the duty of the effecting or sanctioning of such variations and adjustments, the Board is required to act 'always in conformity with the intent of the Act as expressed in sections 7 and 8'. The 'intent of the Act as expressed' in these sections, which is to govern the Board in effecting or sanctioning such variations and adjustments, is that persons and industries in the select territory, as to the 'preferred movements' are to enjoy a statutory

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preference of 20% in respect of railway rates over persons and industries 'located' elsewhere. As already observed, we think the phrase 'the rates specified in the tariffs of tolls in this Act provided for' must be read as including the variations and adjustments brought into force under section 3 (2c); and that the effect of the words of this last mentioned enactment 'always in conformity with the intent of this Act as expressed in sections 7 and 8 and other relative sections hereof' ('other relative sections hereof' would appear to contemplate the principal enactment of section 3 requiring the reduction of existing rates by 20%) is to provide for the maintenance in the tariffs, as adjusted and varied, of the difference of 20% between the rate brought into force when 'new industrial or traffic conditions arise' and the rate which would have prevailed if the Act had not been passed."

We also refer to the following very important paragraph in the Duncan Report as to the incidence of horizontal rate increases:-

"13. Incidence of 'Horizontal War Increases.

There is one further very important feature of the railway situation, as it affects the Maritimes, which calls for special mention. In one sense it is connected with the problems that we have been discussing but its immediate incidence is not so inter-connected with the general problem as to make it impossible to deal with it separately. Indeed the reaction of the burden which it imposes is so great that, in our view, it should be dealt with as a special problem. We refer to the system

under which, during the late war, flat percentage increases (known as 'horizontal increases'), were added to railway rates. We quote, merely as an example, figures submitted to us by the British Empire Steel Corporation in respect of iron and steel articles which show, as briefly as it can be shown, exactly how this system of flat percentage advances has operated:-

STATEMENT of rates on iron and steel articles from Trenton, N.S., and Hamilton, Ont., showing percentage of increase rates in effect 1926 over 1916 -- Rates to the points shown below, and the additional cost per gross ton which the increase represents.

LIST OF COMMODITIES ON WHICH RATES APPLY

	Angle Bars Bars				Bolts Fish Plates		Nuts Rivets				Spikes Splice Bars	
	From Trenton, N.S.						From Hamilton, Ont.					
	Rate in Cents per 100 lbs.		Rate in Dollars per Gross Tons		Percentage of Increase	Increase in Dollars per Gross ton	Rate in Cents per 100 lbs.		Rate in Dollars per Gross Ton		Percentage of Increase	Increase in Dollars per Gross Ton
	1916	1926	1916	1926	-	-	1916	1926	1916	1926	-	-
					%	$ cts					%	$ cts.
Brantford, Ont...	28½	54	6.38	12.10	89	5 72	.08	14½	1.79	3.25	81	1 46
Georgetown, Ont.	27½	52½	6.16	11.76	91	5 60	.10	18	2.24	4.03	80	1 79
Harriston, Ont..	34½	65	7.73	14.56	80	6 83	.15	27½	3.36	6.16	83	2 80

"By the mere operation of railway increases -- and having no relation to any other business considerations -- the burden which a Trenton plant has to meet now as compared with a Hamilton plant is much greater in money than it was formerly.

"The railway administration, in giving evidence before us, agreed that long-distance traffic, particularly heavy traffic, had been seriously prejudiced by the operation of the horizontal increase. It was, they said, their opinion that even on the present level of class rates, and considering expenses, the higher class goods are not carrying their full share of the expense of operations. They had made the suggestion to the Board of Railway Commissioners some two years ago -- at a time when a reduction in class rates was being considered -- that instead of reducing the class rates they should select what was considered basic commodities, such as grain, forest products, coal, iron and steel. The Railway Board, we were informed by the railway administration, felt themselves prevented from working out the proposition in that way, since when the advances were made they were made horizontally, and some declaration had been made at the time that when reductions came they also would be made horizontally.

"In view of the importance of railway rates to long-distance and heavy traffic, we have no hesitation in recommending that the matter should be taken into fresh consideration by the Railway Commission, that they

should be relieved from the necessity of regarding themselves as bound by any such declaration as is referred to, but should be free to consider the whole question on its merits."

(pp. 26-27.)

On page 6 of the submission made to this Commission on behalf of Dominion Steel and Coal Corporation Limited, the comparative statistical position set out in Paragraph 13 of the Report of the Duncan Commission has been brought up to date.

The Maritime Freight Rates Act, 1927, reduced the cost of sending goods from Nova Scotia outwards but did not reduce the cost of conveying goods into Nova Scotia from places outside the "select territory."

The competitive power in Central Canada of Nova Scotia industries was increased but the competitive power of Central Canadian industries in Nova Scotia was not increased, while the Act did nothing to reduce the cost of living in Nova Scotia in so far as it was influenced by the cost of commodities obtained from Central Canada.

(Main Report of the Royal Commission appointed by the Province of Nova Scotia in 1934 to make an inquiry into matters affecting its Economic Welfare, p. 63.)

The Act was a recognition of the problem involved in the burden of the tariff being primarily that it tended to compel the province to pay the full cost of an extensive system of transportation. It attempted to meet the difficulty by the flat twenty per cent reduction in rates. While designed to improve the position of maritime industries competing

in Central Canada, the position of the province, in so far as it continued to purchase goods from central Canada, was left unchanged, with the result that the cost of capital equipment used by basic maritime industries remained comparatively unchanged. The weak position of basic producers in Nova Scotia in relation to the Central Canadian market and their dependence on the export market left them exposed to the disadvantages of narrow markets with economic nationalization and the decline in prices which characterized raw materials during the depression of the early thirties.

(Complementary Report of the Royal Commission appointed by the Province of Nova Scotia to make such Economic Inquiry, pp. 211-212.)

Thisweak position has been greatly accentuated at the present time by the international, financial, trade and exchange restrictions and problems which have been an aftermath of the second Great War. In point of fact the export market from Nova Scotia has largely disappeared.

In the Main Report of the Royal Commission above referred to, the economic forces that have influenced industrial development in Canada are described in general terms. Reference is there made to the centralizing influence to be found in the improvement of transport by the construction of the railway and canal systems.

The next cause of such concentration in that part of Canada on or near the shores of the Great Lakes and the St. Lawrence was the tariff. The tariff system aimed at creating in Canada a group of

industries producing commodities which had previously been imported.

The lake and river ports were the natural centres for collecting the products of agriculture and forestry and for exporting them to other countries. The combination of a large market close at hand, of cheap transport to and from that market, and lastly of cheap power constituted a group of attractions which gave Ontario and Quebec an enormous advantage over other parts of the Dominion and led to their rapid growth.

In order to enable industries to make full use of the inland waterways, the Dominion, either alone or jointly with the United States of America, provided a series of canals which are employed as international waterways, free of toll, and even of wharfage duties. There, therefore, is in Central Canada the accumulated effect of natural advantages, together with the existence of a large and growing market for the products of its industries.

The ports of the Maritime Provinces suffer from the competition of the lake and river ports for summer shipments, while in the winter, when the St. Lawrence is closed, the maritime ports are faced with the competition of the United States ports which are closer to the collecting and distributing centres.

(Main Report of Royal Commission -
Economic Inquiry (Nova Scotia)
pp. 37-40.)

Similar statements will be found in the Report of the Royal Commission on Dominion-Provincial Relations, from which we quote as follows:

"The most striking feature of the industrial expansion was its concentration in Ontario and Quebec. Seventy-eight per cent of the increase in the total net value of manufacturing between 1890 and 1910 occurred in these two provinces. If the production for export (lumber, wood-pulp and preserved fish), iron and steel and local industries such as baking, printing, buttermaking, are excluded, the maritimes made very little progress..... With the cheapening of transportation and the growing advantages of large-scale production, industry was drawn nearer to the rapidly increasing populations of Western Canada and the Central Provinces, and nearer to the centre of United States' industry which financed and controlled so many of the Canadian manufacturing enterprises. The tendency toward concentration in the St.Lawrence Valley was particularly strong in the case of consumers' goods."

Book 1, p. 74.)

"The manufacturing industries of the Maritimes not only failed (with the exception of iron and steel) to derive any substantial benefits from the western development but they also lost ground in their own markets. The small industries and the handicrafts which filled many of the needs of the local communities declined under the competition of the mass-produced

articles of Central Canada.

(Book 1, p. 75.)

"On the other side of the continent, the Maritimes, although profoundly affected by what was going on elsewhere in Canada, did not share equally in the buoyant prosperity of the period."

(Book 1, p. 77.)

"Many thought that the coming of the railway would bring new opportunities compensating for this blow to their commerce by linking a large hinterland to their ports. The Federal Government had earlier built the Intercolonial and its transportation policy later resulted in the extension of the Canadian Pacific (the 'Short Line') to Saint John, and the National Transcontinental to Moncton. However, with the higher cost of railway over ocean transport and the larger capacity of steamships, traffic was irresistibly drawn to the inland St. Lawrence ports and the great American ports to the south. Nearness to Europe which was an advantage in the days of the sailing ship was no longer so. Nevertheless, there was some progress in the development of the Maritimes, as outlets for inland commerce, and in this, federal assistance and policy played a large part. However, between 1891 and 1911 the combined population of Saint John and Halifax rose but slightly (78,000 to 89,000) and part

of this growth was at the expense of the smaller outports which declined."

(Book 1, p. 78.)

"The western settlement and the national policies induced a rapid expansion, a great investment of capital and a measure of prosperity not experienced in the Central Provinces since the 1850's. With the highly specialized export production in Western Canada and the decline in the competitive position of the small maritime manufacturers, Ontario and Quebec became the manufacturing centre of the country. The growing volume of traffic from the Prairie region moved over the railways, the waterways and out through the ports of the Central Provinces."

(Book 1, p. 79.)

"The relative, and in some cases absolute, decline in maritime manufacturing which began at the end of the last century continued during the twenties. The disadvantages of these provinces arising out of their isolation from the large markets of Central Canada and the West, their distance from the industrial centre of gravity of the continent situated in the Mid-Western United States, the unfavourable circumstances affecting the local exporting industries, and the adverse railway freight rate situation (as compared with pre-war levels) prevented them from sharing in the expansion of manufacturing which took place in Ontario and Quebec. They were unable to benefit

from the new developments which stimulated the remarkable growth in the lighter industries, in the production of packaged consumers' goods, new textiles and durable consumers' goods such as motor cars, radios, electrical appliances and other household furnishings. However, some progress was made in the processing of local natural products and also of certain imported raw materials such as sugar and oil. A number of specialty manufacturers held their position, the most important being specialty textiles, shoes and candies. Nevertheless, manufacturing in the Maritimes declined during this period. In 1929 employment in manufacturing was greater than in 1920 in every province except Nova Scotia and New Brunswick. For Canada as a whole, manufacturing employment during the decade rose 14 per cent but fell 6 per cent in the maritime provinces.

.....

"The difficulties of the widespread economic readjustment which the Maritime region had to undergo during the twenties were enhanced, particularly during the first half of the period, by the effects of the national policies. The isolation of these provinces from the markets of the rest of Canada was intensified by the war and immediate post-war rise in freight rates. In the maritimes these rates had risen approximately 20 per cent more than in Ontario and Quebec.

The policy of protective tariffs, although it was not altered in any important respect, bore with increasing weight upon the depressed and marginal exporting industries."

(Book 1, p. 119.)

"The Maritimes form the most mature, and the most chronically depressed, regional economy in Canada."

(Book 1, p. 187.)

"With certain exceptions, such as the specialized apple, potato and fox industries where pre-eminent standards of quality have been developed, and the pulp and paper industry where mass production methods can be applied the Maritime economy in general labours under disabilities and they are reflected in a very low surplus income . . . National tariff policies have probably operated unfavourably in general, since Maritime manufacturing industries producing for home consumption have been exposed to the competition of the more advantageously located manufacturing industries of Central Canada; Maritime primary industries have been burdened with increased costs; and the great shipping, commercial, and financial service industries, which bulked so large at the time of Confederation, have either found it impossible to adapt themselves to changed techniques and the framework of national policies and survive, or have migrated to Central Canada."

(Book 1, p. 188.)

"At the moment the large capital programs of the Maritime governments themselves are the most important and stimulating governmental influences on the economy, but expenditures on the current scale cannot be continued indefinitely."

(Book 1, p. 190.)

We have already referred to the competitive power of Central Canadian industries.

We now wish to deal with the effect of induced freight rates in Central Canada resulting from water and motor truck competition with the railways, upon the economy of Nova Scotia.

The Province refers to and relies upon the factual information contained on pp. 63-67 and 71-73, both inclusive, of Volume 1 and in the Appendices 33, 46, and 48-52, both inclusive, of Volume 2 of the Submission of the Transportation Commission of the Maritime Board of Trade. Volume 1 of that Submission was read into the record and Volume 2 is Exhibit 47. Reference is made to Volume 19, pp. 3504-3529, both inclusive, and to pp. 3574-3586, both inclusive, of the transcript of evidence and to the testimony of Mr. Rand H. Matheson on these pages in relation thereto. The Province concurs in the views expressed and the submissions made in this connection by the Transportation Commission.

In the Report of the Royal Commission on Dominion-Provincial Relations, at page 193 of Book II, it was recognized that the competitive rates which the railways had put into effect to meet the competition of other forms of transportation in Central Canada had the unfortunate effect, for the Maritime Provinces, of affecting adversely the differentials established by the Maritime Freight Rates Act.

As it is submitted, has been established in the submissions of the Transportation Commission, since the passing of the Act, there has been a very great growth in motor truck competition in Ontario and Quebec. In addition, there has been a substantial increase in water competition on the Great Lakes and St. Lawrence Water System. The railway companies have filed and maintained many competitive rates induced by such motor truck and water competition in Central Canada which unquestionably affect prejudicially the advantages conferred by the Act on persons and industries in Nova Scotia.

As is pointed out on pages 22 and 23 of Volume 1 of the Submission of the Transportation Commission of the Maritime Board of Trade, (Volume 18, p. 3431 Transcript of Evidence) at the time of the investigation made by the Duncan Commission, the volume of traffic which was being lost by the railways to motor vehicles had not developed sufficiently to enable the railways to come to a decision as to how far they should go in the direction of meeting motor traffic. It is evident that while the loss of traffic to the motor trucks was then causing the railways concern, the great increase in competition from motor vehicles and water transport

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in the Central Provinces which has since developed could not be forseen. In any event, as a consequence of such competition, a very serious situation has evolved.

The Province suggests, as did the Transportation Commission of the Maritime Board of Trade, at page 23, Volume 1 of its Submission (Volume 18, page 3431 Transcript of Evidence), that had the competitive developments which have subsequently taken place been forseeable, it is probable that the Duncan Commission would have recommended measures to protect industry and persons in the Maritime Provinces against the effect of freight rates in Central Canada induced by motor truck and water competition.

The present situation is that competitive freight rates in Ontario and Quebec have been, in many cases, lower than the corresponding freight rates under The Maritime Freight Rates Act, 1927, (see Submission, Transportation Commission page 65, Volume 1 and Volume 19, page 3519 of Transcript of Evidence) and it is undoubted that the reductions effected in the competitive rates have materially reduced the opportunity afforded by the Act to Nova Scotia merchants, traders and manufacturers, to get their goods into "the larger market of the whole Canadian people."

In the <u>Province of Nova Scotia et al v. the Canadian National Railways et al</u> (1937) S.C.R. 271, it was held by the Supreme Court of Canada that competitive tariffs reducing freight rates established outside of the "select territory", as defined in The Maritime Freight Rates Act, 1927,

are within the contemplation of Section 8 of the Act and when such tariffs prejudicially affect "the statutory advantages", then "the Board shall not approve nor allow" such tariffs; and these words necessarily imply authority to cancel any rates having such effect; but whether any particular competitive rate has that effect must, in each case, be a question of fact to be determined by the Board itself.

The Court agreed with the Board of Railway Commissioners that the authority of the Board under Section 8 is limited to that which is given by or implied in the words "shall not approve nor allow any tariffs which may destroy or prejudicially affect such advantages." The Court therefore held that the Board was right in holding that, if rates under such a competitive tariff outside the "select territory" are found to be such as the Board should not approve nor allow under Section 8 of the Act, it has authority under the Act only to cancel such rates, and has not the authority to adjust or vary rates on the railway lines in the "select territory" by allowing a reduction therein proportionate to the reduction effected by the competitive tariff in the outside territory.

The Board therefore has no authority to adjust or vary rates to shippers in the "select territory" to meet the competitive rates established outside the "select territory". The cancellation of such competitive rates established outside the "select territory" is of no benefit to shippers in the "select territory". Cancellation of the outside competitive rates has not the effect of diverting

[illegible]

the traffic to shippers within the "select territory". Its natural consequence is merely to divert the traffic to the other transport agencies outside the "select territory" whose competition induced the establishment of the competitive rates.

As a result of the establishment of these competitive rates, the Act does not now restore the original purposes of the Intercolonial Railway as interpreted by the freight structure prior to 1912. Such competitive rates frustrate the intent of the recommendation for the 20% reduction, as expressed on page 23 of the Duncan Report, as shippers in the "select territory" are not able to hold their own against shippers served by railway lines or other transport agencies outside the "select territory".

In our Submission, it is essential in order to restore the original purposes of the Intercolonial Railway that where the statutory advantages in rates to persons and industries in the "select territory" have been destroyed or prejudicially affected by the establishment of reduced rates outside the "select territory" induced by competition or otherwise, the Board of Transport Commissioners be directed to adjust or vary rates within the "select territory" in such a manner as to maintain the statutory advantages, i.e. to reduce the rates to preserve the differential established by the Maritime Freight Rates Act.

It is therefore submitted that Section 8 of The Maritime Freight Rates Act, 1927, and Sections 314 and 325 of The Railway Act, and any other relevant provisions of the Act, being Chapter 170 of the Revised Statutes of Canada, 1927, should be amended so as to direct the Board to reduce rates

accordingly and that it be declared in the amending legislation that the rates when so reduced shall not be or be deemed to be unjustly discriminatory or otherwise unjust or unreasonable.

We refer to the statements contained pages 59-60 in Volume 1 of the Submission of the Transportation Commission of the Maritime Board of Trade (Volume 19, pages 3485-3488, Transcript of Evidence) with respect to the class freight rate structure between the Maritimes and other parts of Canada being based on "arbitraries" over Montreal. Reference is also made to the passages in the Submission with respect to arbitraries contained on pages 73-74 of Volume 1 of the said Submission (Volume 19, pages 3585-3586, Transcript of Evidence), page 80 (Volume 19, page 3610, Transcript of Evidence) and pages 84-87 (Volume 19, pages 3658-3665, Transcript of Evidence) and to the evidence of Mr. Matheson in Volume 20, pages 3791-3793 and pages 3865-3868, Transcript of Evidence.

For many years in the history of Canadian railroads, the special position of the Maritimes and their isolation from the rest of Canada have been recognized by the establishment of low arbitraries. This was recognized in the Decision of the Board of Railway Commissioners in the 1922 reduction case (27 C.R.C. 153; 12 J.C.R. & R. 61).

In that case, at 12 J.C.R. & R. page 68, the Board points out as a matter of historical information that arbitraries in respect of the Maritime Provinces were established by the Grand Trunk at least as far back as 1874, via Portland and steamer, before the Intercolonial Railway was constructed, and we quote from that decision as follows:-

> Following the opening of the all rail route the rate between the

accordingly [illegible] it be used [illegible] in his [illegible]
[illegible]
not be or [illegible]
[illegible]

[illegible]

[illegible] Transportation Act [illegible]
[illegible] (volume 19, pages 865-[illegible]. [illegible] of
evidence) [illegible] to the court [illegible]
[illegible] between the [illegible] and other [illegible] or
[illegible] based on "[illegible]" over [illegible].
Reference is also made to the passages in the [illegible]
[illegible] to [illegible] on pages 73-77
of volume 1 of the [illegible] (volume 19, pages
[illegible]-[illegible], transcript of evidence), page 60 (volume 19,
[illegible]), [illegible] (evidence) [illegible] 4-7
(volume 19, pages 365-366), [illegible] (evidence) and to
the evidence of [illegible] (volume 20, pages 3791-
3793) and pages 365-366, transcript of evidence.

[illegible] many years in the history of Canadian
[illegible], the general position of the [illegible]
[illegible] in isolation from the rest of Canada have been
[illegible].
[illegible] in [illegible] of the course of
[illegible] resolutions in the 1926 [illegible] (a [illegible]
[illegible]).

In that case, at [illegible] 6.[illegible] page 66, the
[illegible] theoretical [illegible]
[illegible] in respect of the Maritime Provinces
[illegible] by the [illegible] trunk at least as far back
[illegible] as confederation, and [illegible]
[illegible]:-

[illegible]
Rail lines [illegible] have been [illegible]

> Maritime provinces and territory west of Montreal was constructed by addition to the Montreal rate of a scale of arbitraries. The earliest recorded tariff is that of 1891-1894."

And again, at page 69 of the same report, the Board found that the system of rate making by the establishment of arbitraries over Montreal in the case of the Maritimes:

> "....was in effect long before the creation of the Board and has since been carefully considered more particularly in the Eastern rates case in 1916, more extended reference to which is contained in the judgment in that case; it is an integral part of the whole class rate structure in eastern Canada and could not be disturbed without involving disturbance of the entire freight fabric in this territory."

The Province relies upon the above-mentioned statements contained in the Submission of the Transportation Commission and submits that the practice which the Board has recognized ever since it was established should be extended as suggested by the Transportation Commission so that the "normal" class arbitraries over the rates from Montreal which existed prior to April 8, 1948, (the effective date of the 21% increase) from stations West of Montreal in Ontario territory to stations in the Maritimes, using Saint John as a base, be maintained in relation to any general percentage increases that might be prescribed. It is also urged that where commodity rates are published such arbitraries be applied as maximum over Montreal at the class of the commodities so treated, that the class rates from Montreal to Saint John reflect the average percentage changes in respect of rates from the Central Ontario territory and that stations in other groups in the Maritimes retain the arbitraries over Saint John which also existed on April 7, 1948.

The Province refers to the grounds for the above submission set out on pages 85 and 86 of the Submission of the Transportation Commission (Volume 20, pages 3661-3662, Transcript of Evidence) and to the Decision of the Supreme Court of the United States in the matter of the Appeal of Ayrshire Collieries Corporation, etc. v. The United States of America Interstate Commerce Commission, et al, dated January 3, 1949 and to Ex Parte 166, 270 I.C.C. 403 at pages 454 and 455.

As pointed out on page 86 of the Submission of the Transportation Commission (Volume 20, page 3664, Transcript of Evidence) it will probably be necessary to amend the Maritime Freight Rates Act in connection with this proposal in order that the reimbursements to the carriers could be based upon what is described therein as normal rates which otherwise would apply eastbound as a base but for the maintenance of the arbitraries existing on April 7, 1948.

The submission with respect to the maintenance of arbitraries is as was the recommendation of the Transportation Commission without prejudice to the proposal hereinafter contained of excepting basic and primary commodities, including foodstuffs, from horizontal increases by means of alternative measures, when it appears that persons and industries might otherwise be prejudicially affected.

We have quoted, in its entirety, on pages 16-18 of this Brief, Paragraph 13 of the Duncan Report with respect to the incidence of horizontal increases. It will be observed, upon reference thereto, that the railway administration (Canadian National Railways), in giving evidence before the Commission, agreed that long distance traffic, particularly heavy traffic, had

been seriously prejudiced by the operation of the horizontal increase and that they had made the suggestion to the Board of Railway Commissioners---at a time when a reduction in class rates was being considered--that instead of reducing the class rates, they should select what were considered basic commodities, such as grain, forest products, coal, iron and steel.

The Commission, in view of the importance of railway rates to long distance and heavy traffic, recommended that the matter should be taken into fresh consideration by the Railway Commission and that the Board should be relieved from the necessity of regarding themselves as bound by any previous declaration but should be free to consider the whole question on its merits.

Notwithstanding the position taken by the railway administration in giving evidence before the Duncan Commission, the railway companies in their applications for increases made in the years 1946 and 1948, and commonly referred to as the 21% and 20% freight rates cases, asked for horizontal increases in freight rates. The Board, in its Judgment in the 21% case, granted a horizontal increase of 21%. The statutory Crow's Nest Pass Rates on grain and flour were not involved in these applications. The increase in freight rates on coal and coke granted in the 21% case was 25 cents per ton.

In the Judgment of the Chief Commissioner, concurred in by the other members of the Board, it was said at page 65:-

> "Strong exception was taken by the respondents to the granting of a straight percentage increase in freight rates. But, as I view the matter, this is the only workable and practical method of dealing with the question in order to provide the additional revenue required by the railways.

[illegible] [illegible] of the [illegible] [illegible] the [illegible] [illegible] [illegible]

There were submissions that if increased rates were authorized there should be varying percentages of increase, the lowest percentage of increase being made on long hauls and the highest percentage of increase on short hauls; it was also suggested that maximum increases should be provided in order to avoid a very large increase upon relatively high rates from distant points of production to important markets. One difficulty with respect to the adoption of a varying or maximum increase is apparent, namely, the lack of reliable traffic statistics from which to determine the additional revenue which would accrue from flat or maximum increases on particular commodities. Further there is not on the record anything to enable any determination concerning the commodities and sections of the country and even the individual rates which could best bear the burden of an increase.

While there are a number of individual cases where discrimination in rates is alleged to exist and it may be that some of these require special and separate consideration, on another occasion. But they do not seem to be so outstanding as to require separate treatment in [illegible] of this nature. The Province of British Columbia proposes to make a substantive application to the Board for the removal of the 'Mountain Differential' and the Province of Alberta has under consideration a similar application for like purpose, and to have removed discrimination which is alleged to result from transcontinental rates.

Upon consideration of the whole situation, I think that, in this case, the general increase in freight rates should apply equally throughout the country."

It was argued by Counsel for the Maritime Provinces in the 21% Case that a horizontal increase, if made uniform on the Intercolonial Railway with the rest of Canada on outward shipments to the other Provinces, would destroy or prejudicially affect the advantages in rates given by the Maritime Freight Rates Act to persons and industries in the "select territory". It was pointed out that a horizontal increase may retain the percentage-wise relationship, but in cents per hundred pounds or in dollars per ton, it would disrupt the rate in relation to persons or industries in the "select territory".

In the argument of Counsel for the Maritime Provinces, it was urged that so far as the "select territory" was concerned, the submissions of Counsel for the Provinces of Saskatchewan and Alberta with respect to horizontal increases were buttressed by Section 8 of the Act, which directed that the Board should not approve nor allow any tariffs which might destory or prejudicially affect such statutory advantages in favour of persons and industries located elsewhere than in the "select territory".

The Board was asked, if it decided that a percentage increase should be granted, to establish, in the case of goods purchased or manufactured in the Maritime Provinces for shipment by rail to the Central Provinces or other parts of Canada, the principle of limiting the percentage increase to a flat maximum amount or some other method which would have the effect of lessening a percentage increase or alternatively, restricting the increase

to a reduced percentage on long haul traffic exceeding 350 miles or more, from the "select territory".

The Board of Transport Commissioners did not accede to the argument of Counsel for the Maritime Provinces that a horizontal percentage increase destroyed or prejudicially affected the advantages given by the Act, but granted the straight percentage increase of 21%.

If, upon its true construction, Section 8 of the Maritime Freight Rates Act does not protect persons and industries in the Maritime Provinces from the effects of a straight percentage increase in freight rates, it is submitted that the Act should be amended in such manner as to do so.

The position of the Province, in this regard, is identical with that of Mr. L. A. Forsyth, K.C., in Volume 29, page 5600, Transcript of Evidence, where he said:-

> "In other words, if the Board of Transport Commissioners are correct in their view the horizontal increase does not violate the probibitions of the Act then something ought to be done to change that view, and if they are wrong about that view, still something ought to be done about it."

It was also argued by Counsel in the 21% case that apart from the provisions of the Maritime Freeght Rates Act, the Board, as well as the Interstate Commerce Commission, in percentage cases in the United States, have repeatedly taken into consideration evidence as to the effects of proposed

rate increases on established industries and that they have either denied or prescribed exceptions to rate proposals submitted by the carriers from time to time.

Reference was made in the argument to cases in Canada as well to the United States cases in which the Board and the Interstate Commerce Commission had denied or had prescribed exceptions to proposals for rate increases. The authorities in question are discussed in the argument of Counsel for the Maritime Provinces in the Transcript of Evidence in the 21% case. (Volume 789, pages 17791-17819.)

The submission of Counsel was that in the absence of any percentage increase or general revenue rate applications before the Board since the year 1920, one should turn to considerations given to these matters by the Interstate Commerce Commission, keeping in mind changed conditions and changed circumstancess since 1920 and the past experience in Canada in connection with straight horizontal percentage increases.

It was submitted that it was indisputable that the disruption in rates which resulted from the percentage horizontal increases in Canada, particularly in the 25% and 40% rate increases which took place in 1918 and 1920 respectively, led to such a very severe impact on established industry that the then Chief Commissioner, in the 1921 Reduction Case, 11 J.O.R. & R. 255 at page 257 and in 27 C.R.C. 131 at page 135, commented on the severity thereof, and that in the 1922 Reduction Case 27 C.R.C. at page 153, the inequalities which the percentage increases had accentuated were acknowledged.

It was submitted that the experience and effects of the horizontal percentage increases effected during the first Great War and immediately following the War, should be avoided and that the Board should consider prescribing just and reasonable exceptions in the public interest.

It was also urged that the Board should give consideration in relation to any application for increased rates percentage-wise to a relative lessening of the distribution of the burden on long-haul traffic. It was pointed out that the limiting of increases to flat maximum amounts, larger mileage grouping in rate scales as distances increase and grouping of originating and destination points results in a tapering of rates and lessening the burden on long-haul traffic and that such tapering of rates was justifiable in the circumstances.

It was also contended that it was clear from the authorities cited that when the factual evidence shows, as it does in this case, that horizontal percentage increases would detrimentally affect persons and industries in the Maritime Provinces, then considerations must of necessity be given to the prescription of just and reasonable exceptions not only to protect industries in the public interest but also to protect the railways from loss of traffic.

In the argument of the Counsel for the Maritime Provinces in the 20% case, it was mentioned that the Interstate Commerce Commission had in its decisions repeatedly, since 1931, found it reasonable to prescribe maxima rates or lower percentages in

general revenue cases principally in connection with basic and primary commodities, including foodstuffs, and that in doing so it has taken into consideration industries which were established and have made progress under the rate structure which had been developed.

It was also suggested that the prescription of exceptions by the Interstate Commerce Commission had influenced United States carriers in submitting proposals for increases with exceptions on specified commodities.

The submissions of Counsel for the Maritime Provinces in the 20% case are found in Volume 817, pages 4497-4530.

A concise and accurate summary of the contentions of Counsel for the Maritime Provinces in the 21% and 20% cases, in this regard, is contained on pages 75 and 77, Volume 1 of the Submission of the Transportation Commission of the Maritime Board of Trade (Volume 19, pages 3590-3594, Transcript of Evidence. See also Volume 20, pages 3792-3793.)

The Province repeats the arguments there made and craves leave to refer thereto, as well as to the Canadian and United States authorities cited in support thereof.

The Province also refers to Appendices 63-67 inclusive of Volume 1 of the said Submission of the Transportation Commission and to the information respecting increases on freight rates on pages 78-79 of said Volume 1, and to the evidence of Mr. Rand H. Matheson in Volume 19, pages 3595-3608, Transcript of Evidence.

The Province refers to the suggestion made in the Submission on behalf of Dominion Steel and Coal Corporation Limited at page 10 (Volume 29, pages 5516-5517, Transcript of Evidence), reading as follows:-

> "The Interstate Commerce Commission in a proceeding, reported as 'ex parte 162' gave effect to the request made by the railways that the increase on iron and steel products be limited in all instances to a maximum of eighty cents (80¢) per ton and it is our view that a formula which recognizes the principle accepted by the Interstate Commerce Commission would afford a reasonable solution of our difficulties.
>
> What we suggest is that if we take as a starting point the rates applicable to the movement of our products from plants in Nova Scotia to other parts of Canada as those rates stood prior to the increases ordered in 1948, any increase in the freight rate on any commodity from any one of our Nova Scotia plants to a given point elsewhere in Canada should be limited to the amount in dollars which our competitors would be required to pay by way of increased freight upon the same commodity to reach the same point.
>
> To adopt such a formula would be a belated recognition of the principles inherent in the Duncan Commission's Report and would, in our view, conform to the spirit of Section 8 of the Maritime Freight Rates Act."

(Volume 28,pages 5516-5517, Transcript of Evidence)

[illegible] to the suggestion
[illegible] Association [illegible] of Dominion [illegible]
[illegible] Canada [illegible] to [illegible]
[illegible] of Advisory) reading
[illegible]:

"[illegible] Commerce
[illegible] proceeding in the [illegible] 1921 [illegible]
[illegible] the request made by the [illegible]
[illegible] increase on iron [illegible] products
[illegible] ($64) per ton and it is our view
[illegible] which recognizes the [illegible]
[illegible] by the Interprovincial Commerce Commission
[illegible] stated a reasonable solution of our
difficulties.

What we suggest is that [illegible]
[illegible]
movement [illegible]
[illegible] other parts of Canada [illegible]
[illegible] order to the increase [illegible]
[illegible] increase in the freight [illegible]
commodity from one of our [illegible]
points to a given point elsewhere [illegible]
[illegible]
which our commissions would be [illegible]
[illegible] of increase of freight [illegible]
[illegible]

We think such a formula [illegible]
based recognition of the principle [illegible]
in the Duncan Commission's Report [illegible]
in our view, contrary to the [illegible]
8 of the Maritime Freight Rates Act.
[illegible]

It will be observed that the above suggestion relates to the position of a manufacturer in Nova Scotia shipping goods into the Central Canadian market and that it is urged that the adoption of the proposal would be a recognition of the principles inherent in the Duncan Report and conform to the spirit of Section 8 of the Maritime Freight Rates Act.

Our submissions with respect to horizontal freight increases are based not only upon the principles inherent in the Duncan Report with respect to westbound traffic but also cover all shipments, whether westbound or eastbound. For relief in such respect, we rely upon the principles laid down in the Canadian and American authorities to which we have referred.

Mr. Matheson, in his evidence, in Volume 23, pages 4517-4518 shortly states the general position with regard to horizontal increases.

"First of all, there is the Railway Act. We feel that long distance rates and rates on basic and primary commodities, including foodstuffs, should be kept down to a minimum in connection with long haul increases in freight rates.

.....

West to east, regardless."

(Obviously what is meant by the answer is that both eastbound and westbound traffic is included.)

We have, on pages 12-15 of this Submission, quoted passages from the Duncan Report which are summarized in Volume 1, pages 79-80 of the Submission of the Transportation Commission. (Volume 19, page 3608 et seq. and Volume 20, page 2826 et seq., Transcript of Evidence, the latter reference containing the evidence of Mr. Matheson in this regard.)

The Province concurs in the submissions made to the Board in this connection in pages 80-81 of Volume 1 of the Submission of the said Transportation Commission. (Volume 19, page 3609 et seq., Transcript of Evidence.)

It is submitted that import and export rates from and to Nova Scotia ports should be maintained at such a level as to cause an adequate volume of Canadian import and export trade to flow through Nova Scotia ports.

The Province refers in this connection to the statements contained and the contentions made in the Memorandum of the said Transportation Commission, pages 94-97. (Volume 19, page 3679 et seq. and

Volume 20, pages 3683-3685, Transcript of Evidence.)

The Province adopts the contention therein made that -

> "Maritime port rates be adjusted at the earliest possible date so as to reflect, during the period April to November of each year, the relationships that existed with the port of Montreal prior to March 28, 1938."

It is submitted that there should be a reduction in freight rates on goods, materials and commodities to be processed in Nova Scotia or to be used in the manufacture of products there, shipped into Nova Scotia from points outside the "select territory" as defined in the Maritime Freight Rates Act.

There are a number of producers and manufacturers in Nova Scotia who must obtain a large part of their raw materials of production, as well as containers to package their goods, etc. from points outside the province, and as a substantial part of the market for their goods is in central or other parts of Canada, they must then ship back the finished product and meet the competition of producers and manufacturers with relatively low transportation cost for raw materials and for the distribution of their finished goods.

In the case of agricultural products, the importance of low freight rates on all articles entering into production costs cannot be exaggerated.

It is therefore urged that cognizance should be taken of the paramount importance to the continuance of established maritime industries,

[illegible]

including agriculture, and in the public interest of the economy of Canada to obtain their raw materials of production at the lowest possible cost.

The following statement from the Judgment of the Interstate Commerce Commission in the case of Bonneville v. Alton Railway Company, 245 I.C.C. 751, at page 759, wherein the Interstate Commerce Commission said:

> "Transportation costs on fertilizer should be kept as low as possible, both in the interest of aiding agricultural products and as a means of increasing railroad tonnage of agricultural commodities."

fortifies our submission in this connection. It indicates that both in the interest of the producer and of the railway, transportation costs on articles entering into the production costs of goods, whether manufactured or the products of agriculture, should be kept at a minimum.

It is therefore urged that consideration should be given to the maintenance at a low level of freight rates on raw materials or other goods to be used in the processing or manufacture of products in Nova Scotia, shipped from points outside.

If the adoption of any of the measures advocated in this submission require the furnishing of financial assistance from the Dominion Treasury to the Railways, it is respectfully submitted that such assistance should be given.

While it may be said generally that it would seem that there should be a downward revision of the

capital structure of the Canadian National Railways, the Province is not in a position to make specific submissions in this regard until the proposal of the Canadian National Railway Company, as to revision, has been submitted and considered.

With respect to accounting methods of railways in Canada, it is submitted that in order to appraise the operating results of the railways in any year or to compare the results over a period of years, it is imperative that annual statements should be compiled on a uniform basis. It is urged that to bring this about the Board of Transport Commissioners prescribe a uniform standard classification of accounts which the railways should be required to follow in preparing their records and financial statements.

The present system of permitting each company to segregate its expenditures between capital and revenue accounts leaves to its executives a wide margin of discretion based on financial policy. It is submitted that the segregation of expenditures between capital and revenue accounts in any regulated company should be carried out under rules prescribed by the regulatory body.

In the preparation of a uniform standard classification of accounts, it is suggested that special attention should be given to the following matters:

1. Definite and detailed rules should be laid down as to what constitutes proper charges to the operating accounts under the classification of maintenance.
2. The method of computing depreciation should be determined and the rates prescribed for all classes of assets.
3. Rules for the segregation of accounts should be laid down, clearly setting out what constitutes rail as opposed to non-rail enterprises.

4. Rules for the allocation and apportionment of charges common to both rail and non-rail enterprises should be prescribed by the Board.

With respect to the Canadian National-Canadian Pacific Act, 1933 and amendments thereto, it is submitted that when railways are seeking an increase in freight rates, on the plea of financial need, there is an obligation imposed on them to demonstrate by cogent evidence that they have taken all measures necessary to effect economies in their operations.

Counsel for the Provinces in the 21% case contended that an increase in freight rates was a last resort after all other means of reducing expenses and thereby increasing net earnings had been thoroughly explored. In endeavouring to probe the merits of the contention of the railways that operating results did not yield sufficient net earnings to meet their requirements and that an increase in freight rates was essential, we took the position that the burden was on the railways to show that they had exhausted all reasonable efforts to improve their operating results by effecting economies through co-operation, and elimination of the wasteful effects of aggressive competition.

Highly responsible witnesses for the railways testified before the Duff Commission that annual savings of from Six to Thirty million dollars would be possible on a basis of 1930 traffic through a policy of co-operation. (Pages 673, 674, 675 and 742; 850 and 851; 909, 2401 and 2464, Duff Proceedings.)

Information has since been supplied by the Canadian Pacific Railway and the Canadian National Railway which

shows that the annual savings effected through co-operation from 1933 to 1949 amount now to $1,189,240.

It is also noted from the summary submitted by the railways that some $972,000 of this amount results from the pooling of trains between Montreal, Ottawa and Toronto. It is clear, from the summary submitted by the railways that there is a startling divergence between their estimates of present savings and the estimates given before the Duff Commission.

In the 21% case the railways made no attempt to meet the request of the Provincial Counsel or to satisfy them that all necessary measures had been taken to effect economies. The Board in its judgment held that it had no duty or authority to require the railways to undertake co-operative measures to effect economies or to review what measures they had taken. The Board also stated that it was not a matter which seemed to invite special inquiry on its part, and that nothing could be gained by entering into any extensive discussions on the subject. In other words, the Board, in arriving at its appraisement of the financial need of the railways on which it based

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its judgment for an increase in freight rates, wholly failed to take cognizance of the wasteful competitive practices mentioned in the report of the Duff Commission.

It is our submission that the decision of the Board in this respect was at variance with the principles which it should have followed and that in so deciding the Board failed to take cognizance of a cardinal factor to be considered in arriving at the measure of freight rates to be imposed on the public.

In support of these submissions and to indicate the obligation upon the railways to effect economies and more remunerative operation by co-operative measures, we suggest that the principles and recommendations, as well as statutory directions hereinafter mentioned, should have been adhered to:

First; We refer to the general principles adopted by the Interstate Commerce Commission with respect to rate-making. Those principles are:

(a) that it is necessary for railways to cooperate to reduce waste.

(b) that railways seeking an increase in rates should explore diligently every possible avenue of improving their situation, not only individually but collectively, through co-ordination of services, and

(c) that the railways are not performing their full duty to the public, especially in a time of national stress, unless they have availed themselves of all the means reasonably at their disposal, including

wholehearted cooperation with their competitors to function as economically and effectively as they can.

Second: In addition to the general principles mentioned above, the matter of economies by cooperation has received special attention in Canada in the report of the Duff Commission which, after exposing the wasteful effects of aggressive and uncontrolled competition, recommended that the railways be obliged by Statute to adopt cooperative measures for the removal of unnecessary or wasteful services or practices.

The complete text of these recommendations is contained in Paragraphs 210 and 211 of the Duff Report as quoted below:

"210. We have emphasized the fact that a principal weakness of the past decade has been the failure of the railways to act together in their own interests and in the interests of the public. It is not enough that each (railway) should take all practicable measures of economy in respect of its own system. There must be joint action with a view to savings in the wider sphere.

211. A statutory duty should be imposed upon the trustees (of the Canadian National Railways) as well as upon the Board of Directors of the Canadian Pacific Railway that, consistently with the provisions of the existing law and with the recommendations of this report and with the provisions of all reasonable services and facilities, they should adopt as soon as practicable such co-operative measures, plans and arrangements as shall, consistent with the proper handling of the traffic, be best adapted to the removal

of unnecessary or wasteful services or practices, to the avoidance of unwarranted duplication in services of facilities, and to the joint use and operation of all such properties as may conveniently and without undue detriment to either party, be so used."

Third: Any doubt as to whether the two major systems in Canada had a duty to cooperate to effect savings and economies was removed by the passing of the Canadian National - Canadian Pacific Act, 1933. The Act was passed to implement the recommendations in the Duff Commission Report.

The Act specifically directed the Railway Companies

> "for the purposes of effecting economies and providing for more remunerative operation . . . to agree and continuously to endeavour to agree upon . . . such cooperative measures, plans and arrangements as are fair and reasonable and best adapted. . . to effect such purposes."
>
> (Section 16 (1).)

The Act clearly indicated the nature of such measures, plans and arrangements which were to be undertaken "for the purposes of effecting economies and providing for remunerative operation".

Section 16 (2) sets out particulars of some of these measures, plans and arrangements. It provides that:

> "Without restricting the generality of the foregoing, any such measures, plans or arrangements may include and be effected by means of -
>
> (a) new companies controlled by stock ownership, equitably apportioned between the companies;
>
> (b) leases, entrusting agreements, or licenses, or agreements for the pooling and division of earnings arising from the joint operation of any part or parts of freight or passenger traffic, or express,

[illegible] ; [illegible] as to whether the two [illegible] [illegible] [illegible]

telegraph, or other operating activities or services;

(c) joint trackage, running rights, joint ownership, or joint operating agreements, depending upon the nature of the property or services included in any co-operative plan; and

(d) joint or individual highway services, or highway and railway services combined, in any form.

Fourth: The progress made under the Act, in effecting cooperative arrangements was the subject of an investigation lasting about two years and undertaken in March, 1938, by a committee appointed by the Canadian Senate:

"to enquire into and report upon the best means of relieving the country from its extremely serious railway condition and financial burden consequent thereto."

The minutes of evidence and the report of the Committee are contained in Exhibit 382 of the proceedings before the Board in the 21% case.

That Committee found, in short, that the recommendations of the Duff Commission had "never, in fact, been applied in a practical sense".

The Committee further found that "there is reason to feel that considerable economy can be secured from co-operation if it is approached earnestly and with a will to accomplish results".

The Committee found that the facts which had been brought to the knowledge of the public as to the "slow progress of co-operative plans to date have had a valuable effect in stimulating both railway systems to further efforts in this direction".

Looking to the future, the Committee reported that it was advised that:

> "a number of important plans for co-operations are now under study, including a proposal for a complete pooling of all competitive passenger train services throughout the country, which offers an opportunity for important economies;"

and the following are extracts from the final paragraph of the Committee's Report:

> "in the interest of the railways and of business generally . . . that further and more serious attempts should be made to give effect to the letter and the spirit of the Canadian National-Canadian Pacific Act, 1933 . . . That, in the opinion of the committee, offers the only practical course looking to the improvement of our present railway difficulties."

The attitude of the Railways and of the Board has already been stated.

It is difficult for anybody outside the councils of the railways to advance any definite and concrete suggestions as to where and how specific measures could be taken which would result in reduced operating costs through cooperation. Nevertheless, the wide divergence between the estimates of responsible railway officials and the accomplishments to date clearly suggest the necessity of an exhaustive inquiry into this phase of the railway problems in Canada.

The Board, in its judgment in the 21% case, did not accept any responsibility for making such an inquiry in a general freight rate increase case. All attempts by Provincial Counsel to obtain the required information by examination of officers of the railways

were abortive because of the ruling of the Board.

We therefore respectfully suggest that this Commission should make a study of this question. The purpose of cooperation is, of course, to effect economies and to reduce thereby the financial requirements of both railways. It is obvious that the Act has not produced the results which were forecast and that some method of cooperation must be devised which can be enforced so as to bring about the desired results.

Any amendments to the Railway Act, the Maritime Freight Rates Act, 1927 or any other railway legislation which is necessary to give effect to the submissions herein made should, in our submission, be enacted.

All of which is respectfully submitted.

F. D. SMITH

of Counsel for the Government of
the Province of Nova Scotia.

(Page 14624 follows)

P

MR. SMITH: If your lordship will observe, the first two pages of my submission are of a very general nature. I refer to the Report of the Duff Commission and to the extraordinary development of railways in Canada as set out in detail in that Report. I also refer to the extent of capital expenditures which were made during the years 1923 to 1935. Then I relate my submissions, first to the problem relating to Nova Scotia having regard to what we submit are the handicaps imposed on our economic life by geography and by transportation and by other policies in Canada, including trade policies.

Insofar as the transportation problems are concerned, I adopt as my own the passages from the Report of the Royal Commission on Maritime Claims, popularly known as the Duncan Report, passages which are found on Pages 2 to 5 of my Brief.

You will observe, my lord, that under the caption "II. Transportation and Freight Rates" in paragraph 7 there is dealt with the question of Maritime railways; paragraph 8 relates to the history of the Intercolonial Railway; paragraph to the rate structure of the Intercolonial Railway; and paragraph 10 to the effect of changes in rate structures on the Maritimes.

Now, these passages from the Duncan Report have been referred to on many occasions during the sittings, and it is not my intention to prolong the sittings by reiterating arguments which have been made. I do suggest, however, that the basis of our special position in the Maritimes is found in the Duncan Report and the legislation which was passed as a result of that Report, otherwise the Maritime Freight Rates Act.

I also refer on Page 5 to the statement which is found in the appendix to the Report of the Duff Commission in relation to the Intercolonial Railway. It is a very short statement and is practically on all fours with the statement contained in the Duncan Report. I would direct your attention to the last passage, the last sentence on Page 6 of the quotation from the Duff Report, where it is said:-

(Page 14626 follows)

"So, if today the Intercolonial forming with the National Transcontinental Railway, the eastern line of the Canadian National system seems to present many of the aspects of commercial failure, it should be remembered that its economic defects are to a great extent inseparable from a region which had its roots and remains rooted in the broader considerations of public policy."

I then refer to the recommendations on freight rates which were made by the Duncan Commission and I do not propose to read that passage because it has already been discussed at great length and both examination-in-chief and cross-examination and re-examination has taken place particularly with respect to the evidence of Mr. Rand Matheson and to the other witnesses who were called in the Maritime provinces.

I refer then on Page 8, my lord, to the implementation of the recommendations with respect to freight rates by the passage of the Maritime Freight Rates Act of 1927, as it was then called. On the revision of the Statute it became the Maritime Freight Rates Act, Chapter 44, of the Revised Statutes of Canada, 1927.

Now, on Page 8, I set out the preamble in the original copy and that preamble is an exhibit in the present proceedings. I do not remember the number of it. In any event, the preamble has been read on several occasions and I do not propose to read it now.

I then direct the attention of the Commission to the cases in the Supreme Court of Canada in which the Act has been considered or construed. The Act, I may say, is found in Appendix I to the Submission of the Government of the Province of New Brunswick. I discussed briefly the

provisions of the Act in Pages 9 to 12 inclusive and I do not think it is necessary at this time to again make any extended reference to those provisions as by this time I think the Act is fairly familiar to this Commission.

Now, I do make a point here at Page 12 of my Brief that in addition to the recommendations on freight rates as to the broad measure of reduction of approximately 20 per cent, there were certain other considerations which the Commission said should be taken into account. I refer to the passages on Pages 23 and 25 contained in Paragraph 12 of the Duncan Commission and those passages are set out on Pages 12 to 15 of the Submission.

These passages relate to a suggestion made by the Commission that broader supervisory powers should be conferred upon the Board of Railway Commissioners as it then was. This matter has also been discussed at various hearings of this Commission. I must frankly point out that this same submission which I am making here was made to the Royal Commission on Dominion-Provincial Relations and it was dealt with at Pages 198 and 199 of Volume II.

At Page 198 of Volume II of the Recommendations in the Sirois Report, the following passages are found:

> "Our attention was also drawn to this matter (the matter is the matter of possible enlargement of the powers of the Board of Transport Commissioners which were referred to also by the Saskatchewan Government)--our attention was also drawn to this matter by the Transportation Commission of the Maritime Board of Trade, which strongly urged our approval of the proposition. The recommendation of the Duncan Commission, if given effect, would have substantially altered the powers of the Board of Railway Commissioners. The Railway Commission,

it is pointed out in the Report 'does not feel itself empowered to pass under its review, when appeals are made to it, the same wide range of business considerations which railway companies themselves can take into account in forming a judgment as to the extent to which they should develop trade and business' while deprecating the view which had been presented to them that 'the railways should be operated to the advantage of the trader irrespective of the financial results to the railway' the Duncan Commission goes on to say 'On the other hand, from a public point of view, in return for the statutory and other public privileges which railway companies enjoy, it may not be unreasonable that there should be a responsible review of their policy (as interpreted in their rate structure) in its relation to the natural basic products of the country, and the development of these products and associated enterprises'. It therefore recommended that the Board of Railway Commissioners be given power in weighing an application involving the considerations suggested -- the development of industries through rate adjustments to overcome handicaps of geography and 'such reasonable compensation over all as to permit of a certain amount of trade development' -- 'to order an accounting investigation at their own hand, into the incidence of the railway charge on the costs of production of the commodity, and its relationship to other costs, and to the general trading results of the interest involved'".

Now, here is the finding of the Supreme Court on this point:

"Such a change in the powers and function of the Board of Transport Commissioners would give it managing powers of a kind which it has hitherto repudiated when urged to exercise them.

If the Board were given these powers to be exercised in the manner suggested, the Government of Canada would clearly be involved in responsibility for the financial consequences to the railways thus obliged, perhaps against their own judgment, to adopt policies designed for the development of particular areas or special enterprises. The recommendation, in the twelve years that have passed since it was made, has not been implemented, as the submission of the Maritime Transportation Commission points out, by any modification of the Railway Act in the direction suggestion; and we do not feel that the public interest would be served were we to renew the suggestion that the power of the Board of Transport should be enlarged in these respects."

Now, my lord, I am repeating before this Commission the same argument which was advanced before the Dominion-Provincial Conference. I realize that as has been said on many occasions during the course of these hearings, that it would be impracticable to make the Board of Transport Commissioners an "economic planning board", as the phrase is, but I do suggest, my lord and gentlemen, that there is some room for the conferring of power upon the Board under which they could take into consideration matters which it has hitherto refused to consider. I do not want to prolong my submission at this time but it is my intention to submit an amendment to the Railway Act and, if necessary, to any related legislation along the lines which Mr. Matheson has suggested in his brief -- in the brief of the Maritime Transportation Commission.

THE CHAIRMAN: Now, in that regard Mr. Matheson told us that he would have amendments submitted. Are these the ones you are dealing with now?

MR. SMITH: No, these are his original amendments, that is, the general lines of the amendments but I have not seen any draft legislation as well.

THE CHAIRMAN: Are you talking now of the same subject that he was?

MR. SMITH: Yes, I am talking on the same subject, my lord.

THE CHAIRMAN: Because he said that he would submit amendments to us. Are you covering that same ground?

MR. SMITH: I am adopting the general lines of his amendments, my lord, and this is what his suggestion was. At the foot of Page 80 of the submission:

"Amendments should be made in the Railway Act and related legislation bestowing specifically on the Board wider supervisory powers making it mandatory for it to give due consideration in connection with any rate adjustment to --

(a) the conditions which at any time prevail in industry to the end that commodities may move freely;"

That is a principle that is laid down in the Hoch-Smith Resolution that was adopted in the United States some years ago and reference will be found to that revision in Bigham's work on Transportation Economics at Page 181 and --

(b) 'the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed'".

That is taken from Section 15-(A) of the Interstate Commerce Commission Act.

And then the other matters to which they would be directed to give consideration are the rate relationships under which industries have been established and developed and the incidence of increases in worsening regions economically. That, as you may recall, is more or less an epitome of the speech which was made by Mr. Kelly and which is referred to in Appendix B of Volume II of the Maritime Transportation Commission, being Exhibit 47.

Now, I adopt the suggestions made in that brief and pass on to the next point. I refer at Page 15, my lord, to the Judgment of the Supreme Court of Canada in the Maritime Freight Rates Act in 1933 at Page 15 of my Brief in which the Chief Justice, speaking for the court construed the provisions of Sections 7 and 8 which are very important provisions of the Maritime Freight Rates Act.

(Page 14635 follows)

I now come at page 16 to the recommendations which were made in the Duncan Report on the oft discussed question of horizontal increases. That passage has also been referred to on numerous occasions during the hearings of this Commission. I propose now to refer merely to the passages and to deal with the question in a rather cursory manner perhaps when discussing the submissions which I am making with respect to horizontal increases. I am just using this passage for more ready reference.

At page 18, Mr. Chairman, I refer to the general effect of the Maritime Freight Rates Act. The sources of the statements which are contained on pages 18, 19, 20 and 21 are the report of the investigation of the Royal Commission on Economic Welfare which was made in Nova Scotia, otherwise known as the Jones Report. It is pointed out in the main report made by that commission that the Maritime Freight Rates Act reduced the cost of sending goods from Nova Scotia outwards but did not reduce the cost of conveying goods into Nova Scotia from places outside the select territory.

THE CHAIRMAN: Does your brief take an attitude on that question, whether the Act should be extended to goods coming in?

MR. SMITH: No, Mr. Chairman, I am not asking for an extension of the Act in so far as inward goods are concerned. There is a submission in the latter part of my brief, which I will speak to later, which I intend to relate to the matter of horizontal increases. It is true that in the outline brief which I filed we went further than that, but in this submission there are no suggestions on my part, apart from argument as to the maintenance of arbitraries to which I will refer later.

In order to give you more general information as to what my brief contains, may I say that you will find on pages 18 to 21 references to the Jones Report, and on pages 21 to 24 there is some copious quoting from the report of the Royal Commission on Dominion-Provincial Relations. The purport of these quotations as to the economy of the maritime provinces is summed up at page 23 in a quotation from Book I of the Sirois Report, page 187, reading:

> "The maritimes form the most mature, and the most chronically depressed, regional economy in Canada."

Then this very careful report goes on to say at page 188, as quoted in my brief at the bottom of page 23 and on page 24, that:

> "With certain exceptions, such as the specialized apple, potato and fox industries" --

That was in the days of profit in apples and also in foxes, and I am afraid at the present time that we have a rather depressed economy with respect to those two industries. The quotation continues as follows:

> " -- where pre-eminent standards of quality have been developed, and the pulp and paper industry where mass production methods can be applied, the maritime economy in general labours under disabilities and they are reflected in a very low surplus income. . . National tariff policies have probably operated unfavourably in general."

I wish to be fair in this matter, and it is only true to say that the province of Nova Scotia contains a manufacturing locality in the Island of Cape Breton, in the county of Pictou, and to some extent in the county of Cumberland, but generally, apart from shipping and other

allied industries, it is largely an agricultural and horticultural industrial locality. The extract from the Sirois Report continues:

> "National tariff policies have probably operated unfavourably in general, since maritime manufacturing industries producing for home consumption have been exposed to the competition of the more advantageously located manufacturing industries of central Canada; maritime primary industries have been burdened with increased costs; and the great shipping, commercial, and financial service industries, which bulked so large at the time of Confederation, have either found it impossible to adapt themselves to changed techniques and the framework of national policies and survive, or have migrated to Central Canada."

Then there is a quotation from page 190 of the Sirois report reading:

> "At the moment the large capital programs of the maritime governments themselves are the most important and stimulating governmental influences on the economy, but expenditures on the current scale cannot be continued indefinitely."

Generally I think that is an accurate picture of the industrial, economic and agricultural situation in the province of Nova Scotia. The first point upon which I make submissions is with respect to competitive freight rates in central Canada resulting from water and motor truck competition, and what the effect of these competitive rates is upon the economy of Canada. This matter was also discussed quite extensively before this Commission, first in the submission made by the Transportation Commission of the Maritime Boards of

Trade, and also in the evidence of Mr. Rand Matheson. I refer to the passages in the volumes of transcript where his evidence is contained as well as to these two submissions. I also refer to the report of the Royal Commission on Dominion-Provincial Relations at page 193 where this same point was mentioned. I should like to read the paragraph entitled "Submissions on behalf of the Maritime Provinces."

> "The other representations made in provincial submissions are illustrations of the difficulties and apparent inequalities that result from the competition of other forms of transportation with the railways. The maritime complaint which we have summarized above arises from the unsettlement of the relationship, which had been established between maritime and central Canadian rates by the Maritime Freight Rates Act, through the necessity with which the railways were faced of either meeting the competition of trucks in the central area or abandoning to them a considerable share of their business in that area. This is an illustration of the effect which the development of trucking competition in particular areas can have upon the whole freight rate structure of Canada. The effect, if the railways decide to meet the competition, is to increase the rate differential between various regions thus checking or even reversing the present trend toward equalization. For the maritime provinces such results are especially unfortunate since they affect adversely the differentials established by the Maritime Freight Rates Act. The remedy suggested in submissions made to us on behalf of the maritime provinces is

maintenance of the differentials fixed in the case of railways no matter what form the competition takes or what the consequences to the railway may be; but there is recognition of the difficulty of doing this in the absence of some measure of federal control over alternative systems of transportation.

"We find ourselves unable to accept the argument that, in the circumstances now existing, a railway rate differential in favour of a region must be maintained against all forms of competition and regardless of the costs of operation. This difficulty about the maintenance of these maritime rates is a consequence of truck competition and it can only be dealt with as part of the wider problems of transportation which are discussed in the following chapter."

In the following chapter there is a long discussion chiefly of the effects of highway competition. I still submit, Mr. Chairman, that by virtue of this competition in central Canada the advantages which were given by the Maritime Freight Rates Act have been frittered away, and that the Act is not as effective as it was before such competitive rates were put into effect.

THE CHAIRMAN: Can you give us any specific case of that to which you can point?

MR. SMITH: Pardon?

THE CHAIRMAN: Can you give us any specific case of such a competitive rate having that effect?

MR. SMITH: Yes, there were instances given in the evidence of Mr. Rand Matheson. . I have no evidence and I do not intend to call Mr. Matheson and put him on the stand again. I am merely adapting here the argument of Mr. Matheson with respect to that

situation, and I have no particular witness to put on the stand to prove a particular case. You will recall, of course, that there was the so-called potato case which was before the Supreme Court in 1936. At that time the potato growers of the maritimes were complaining of competitive rates which had been put into effect in Ontario. As I read the judgment of the Supreme Court of Canada it was held that the applicants did not establish that their advantages in rates had been destroyed or prejudicially affected, and therefore by virtue of Section 8 they could not insist upon the cancellation of the competitive rates.

Mr. Matheson has promised to send to the Commission a draft section of the Maritime Freight Rates Act which will, in my view at least, improve the position of the maritimes with respect to this competitive situation, and I do not propose to labour the point at this time. I adopt the submission and also the form of amendment which will be proposed by Mr. Matheson.

THE CHAIRMAN: You see Section 8 of your Act says that the Board shall not approve or allow any tariff which may destroy or prejudicially affect such advantages. That is the advantages which it is the intention of the Act to confer upon the maritime provinces.

MR. SMITH: Yes.

THE CHAIRMAN: In favour of persons or industries located elsewhere than in such select territory. I think Mr. Matheson told us that Section 8 does not go far enough.

MR. SMITH: That is right.

THE CHAIRMAN: You say the same thing?

MR. SMITH: I say the same thing. I point out in my brief that:

" . . .it was held by the Supreme Court of Canada that competitive tariffs reducing freight rates established outside of the 'select territory'. . . are within the contemplation of Section 8 of the Act and when such tariffs prejudicially affect 'the statutory advantages', then 'the Board shall not approve nor allow' such tariffs. . ."

I point out further that the court agreed with the Board that the authority of the Board was limited to that which is given by or implied in the words "shall not approve nor allow any tariffs which may destroy or prejudicially affect such advantages." The court held that the Board was right in holding that, if rates under such a competitive tariff outside the "select territory" are found to be such as the Board should not approve nor allow , it has authority only to cancel such rates, and it has not authority to adjust or vary rates by allowing a deduction. They also held, as I said, as a question of fact that the applicants had not established that the tariffs had prejudicially affected the stautory advantages in rates.

THE CHAIRMAN: If the parties had established prejudice would they have been upheld?

MR. SMITH: The only result which could follow would be that the offending rate would be cancelled.

THE CHAIRMAN: Yes.

MR. SMITH: That is the only thing that could be done.

THE CHAIRMAN: But the Board could not substitute another rate for it.

MR. SMITH: They could not substitute.

THE CHAIRMAN: I suppose that would be the

ordinary class rate, would it?

MR. O'DONNELL: The preference would have been maintained, whatever it was.

THE CHAIRMAN: Then the railway could have tried again with another rate which might not have prejudiced anyone. Do I understand you also have an amendment to submit?

MR. SMITH: No, the amendment that I will submit will be identical with the one which will be submitted by Mr. Matheson at this point.

THE CHAIRMAN: All right. We shall have a short recess.

---Recess.

(Page 14645 follows)

MR. SMITH: Now, my lord, on Pages 29 to 31 inclusive of my Brief I deal with the question of arbitraries, and I propose, my lord, to relate this question to the matter of horizontal increases, and the adoption of the suggestions which are made as to arbitraries I propose as one of the methods of relieving the effect of horizontal increases.

THE CHAIRMAN: That is, you are against horizontal increases?

MR. SMITH: I am against horizontal increases.

MR. FRAWLEY: And he is not alone.

MR. SMITH: The matter of arbitraries is a question which has been been discussed by Mr. Matheson both in his Brief and in the evidence which he gave. I am also relying upon the information and upon the testimony which he gave in this connection, but, as I say, I propose to relate that question to the question of horizontal increase.

Now, at Page 32 I begin the discussion with respect to horizontal increases. I don't propose, my lord, to read all the passages in my submission with respect to horizontal increases. It is a matter which has been discussed at considerable length already, and your Commission is quite familiar with the points involved in the question.

It is by no means a new question. It has been raised on many occasions in the United States and it has also been discussed in some cases in Canada. As your lordship is aware, the question was raised both in the 21 Percent. Case and the 20 Percent. Case; and in the Judgments, in the 1948 Judgment as well as in the review

of that Judgment in the 1949 Judgment, it was decided that the matter of horizontal percentage increases was not to be taken into consideration in respect of either the 21 percent. increase or the 8 percent. increase, although there was a reference - -

THE CHAIRMAN: Pardon me, what do you mean by "was not to be taken into consideration"?

MR. SMITH: That in taking into consideration the amount of money that was required to give relief to the railways it was decided that the method which would be adopted, except with respect to coal and coke, would be a straight percentage increase of 20 percent.

THE CHAIRMAN: Yes, but would be horizontal.

MR. SMITH: Would be a horizontal increase. They did not in other words accede to the argument which was advanced by the provinces that in those cases which were revenue cases there would be any exceptions to the straight horizontal increase other than the ones which were asked for in the application filed by the railways.

MR. EVANS: Would my friend permit me? I think it is only fair - -

THE CHAIRMAN: Would you please speak up? From where you are there is a chasm between us.

MR. EVANS: I think it is only fair that my friend should not leave the record as he has done. He rather suggested that the Board had ignored this question of horizontal increases.

MR. SMITH: Well, I really had no intention of doing that.

MR. EVANS: I am sure you did not.

THE CHAIRMAN: That is what I thought, but I think Mr. Smith made it clear.

MR. SMITH: I think that appears from my Brief at Page 33 where in the Judgment of the Chief Commissioner he says:-

> "Upon consideration of the whole situation I think that in this case the general increase in freight rates should apply equally throughout the country."

MR. EVANS: Yes, but he also deals (and I don't want to argue this at length) he also deals with the question at Page 65 in the 21 Percent. Judgment, and he suggests there that in the case of individual prejudice the Board would proceed.

MR. SMITH: I have the whole - -

MR. EVANS: Yes, and I want to say in addition that on Page 11 of the 1949 Judgment, that is in the so-called 8 percent. interim increase case, the reference there is to the Order-in-council under which the Board is to hold a general inquiry, and that is one of the matters that the Board intends to deal with in the general inquiry.

(Page 14648 follows)

MR. SMITH: What I am trying to avoid is any repetition; and if I have made any erroneous statement, I have done so unwittingly.

I would point out that at page 33 the passages from the judgment to which Mr. Evans has referred are to be found; that is, the whole statement made in the judgment of the Chief Commissioner is set out; that is, in the 21 per cent case.

THE CHAIRMAN: I suppose that the increase provided for in the 21 per cent case was intended to produce about a certain amount of revenue for the year in excess of what had been produced in previous years; and in doing that, they adopted a horizontal method.

I presume you have another method which you say ought to be substituted for the horizontal method, and which you say would produce the same result in revenue.

MR. SMITH: That is right. The railways are entitled to the money and they must get it by one method or by a combination of methods.

THE CHAIRMAN: We shall expect you to set out the method.

MR. SMITH: I propose to deal with this matter of necessity. I think it has to be dealt with rather generally.

THE CHAIRMAN: Yes.

MR. SMITH: Now, I would point out that the Board was asked, in the 21 per cent case, at page 34, that if it decided that a 20 per cent increase should be granted, to establish in the case of goods purchased from a manufacturer in the Maritime Provinces for shipment by rail to the central provinces or other parts of Canada, the principle of limiting the

percentage increase to a flat maximum amount or some other method which would have the effect of lessening a percentage increase or alternatively restricting the increase to a reduced percentage on long haul traffic exceeding 350 miles or more, from the "select territory."

I would point out that the Board did not accede to the argument; and I suggest that if it is a true construction, section 8 of the Maritime Freight Rates Act does not protect the persons and industries in the Maritime Provinces from a straight percentage increase in freight rates, and it should be amended, and I propose to move in that regard.

I take the same position as that taken by Mr. L. A. Forsyth in his evidence in which he said, in Volume 29, page 5600:

> "In other words, if the Board of Transport Commissioners are correct in their view the horizontal increase does not violate the prohibitions of the Act then something ought to be done to change that view, . . ."

That is rather cryptically put in Mr. Forsyth's inimitable style.

It was also argued by counsel in the 21 per cent case that apart from the provisions of the Maritime Freight Rates Act, the Board, as well as the Interstate Commerce Commission, in percentage cases in the United States, have repeatedly taken into consideration evidence as to the effects of proposed freight rate increases on established industries, and that they have either denied or prescribed exceptions to rate proposals submitted by the carriers from time to time.

I also refer to arguments made in this case, and I propose at this time to refer to some late cases in the I.C.C. in which the question is discussed, and which I think throw some light upon the subject.

The first case to which I refer is that of Ex Parte 166.

THE CHAIRMAN: Is that in your brief?

MR. SMITH: No, it is not, my lord. Ex Parte 166 Increased Freight Rates. It was decided on July 27, 1948, and it is reported in 270 I.C.C. 403, at pages 452 to 455. Perhaps I had better read a passage:

"As already appears in this report, extensive hearings were conducted throughout the country. . ." That also was a revenue case, and as already pointed out to this Board, there is provision in the relevant statute that revenue cases be given priority.

"As already appears in this report, extensive hearings were conducted throughout the country at which appeared many interests, governmental and private carriers of different types and shippers. Some supported the petition, others were in complete opposition, and many, while giving qualified support to the purposes of the petition, were in opposition as related to the form of increases proposed or of the amount with respect to particular commodities." You see, there are two ways of forming an increase, from the amount, with respect to the particular commodity, a percentage increase, or an amount. The situation is identical with that presented in the Increased Rates, 1920, 58 I.C.C., page 220; pages 243-4, where it was said:

"Many shippers have directed their testimony

and argument principally to the method of increasing the rates rather than to the amount of the increases. Shippers are far from unanimous in their views and may be divided into three groups: (a) those who seek the preservation of existing relationships and differentials either by specific or flat increases or by applying the percentage increase to base rates and employing in connection therewith differentials from and to other points; (b) those who advocate a percentage advance in all instances, contending that differentials should increase in the same ratio as all other rates and charges; and (c) those who advocate a percentage increase with a maximum."

That is the quotation from the old case.

"In this case, as in all the general rate increase proceedings that have preceded it, there has been a few disagreements between long haul shippers and those who are closer to their markets. As we pointed out in the case last cited, page 244, there are many competitive situations where no recognized differential relation of rates has been established, but where, nevertheless, rates have been made to reflect competitive conditions, and such situations greatly outnumber those in which fixed relations have been established. The application of a percentage increase to both long and short haul competing shipments results in widening the amount of the difference between the rates, often to such an extent as to exclude the long-haul shipper from the common market or compel him to reduce his prices so that he has no profit. Carriers transporting for long haul

[illegible]

[illegible] is the quotation from the old ones.

In this case, as in all the concrete instances [illegible] that have needed it, there [illegible]

[illegible]

225, there are many complexities [illegible] no [illegible] but where, [illegible]

[illegible]

long and short [illegible] in widening the scope of the [illegible] the [illegible]

[illegible] no [illegible]

shippers are also concerned with the maintenance of fixed differentials or differences, or at least in preventing increasing them to such an extent as to stifle competition and movement. Contrarywise, shippers located so that their traffic moves shorter distances, pay or absorb a lower bssic rate, and are subjected to a lesser amount of increase if the same percentage is applied to their rates as to the rates charged the competing long-haul shippers. This advantage they consider as justly due to their geographical situation and as properly to be insisted upon by them.

In resolving this conflict, both the carriers and the regulatory commission must have regard to the effect of the manner of increase upon the movement of traffic. This is practical consideration for carriers that are dependent upon tonnage for revenue, and it is emphasized by statute as a matter for the commission to take into account."

That reference is to section 15-A of the Interstate Commerce Commission Act.

"In this proceeding it is shown that the petitioners in formulating their proposals decided upon a combination of percentage increases, adjusted to regional needs, with certain maximum limits to preserve traffic and lessen the unfavourable effect upon existing commercial relations, and in some cases stated flat amounts of increases. They undertook, as their judgment indicated, the maintenance of the largest amount of traffic possible for their lines, as against competitive interests or the loss of traffic or

[illegible] differential [illegible], or at least in [illegible] them to such an [illegible] and movement. [illegible] that [illegible] increases if the same [illegible] they consider [illegible]

[illegible], both [illegible] are [illegible] they [illegible] for regarding that as dependent upon tonnage [illegible] to attribute as a [illegible] to take into account." [illegible] principle is [illegible] the interpret [illegible] admission [illegible]

[illegible] that the [illegible] proposals [illegible] purposes, [illegible] certain maximum [illegible] common [illegible] the loss [illegible]

substitution of tonnage. The system of making increases devised was generally similar to that employed by us in certain previous general rate proceedings.

As already stated, a great amount of testimony was taken with respect to the general questions of the amount of the increases and as to how the amount should be spread sectionally, and also as to how any increases should be made upon the individual commodities or groups of commodities. Some of this testimony was in much detail. In other instances it was obviously much condensed, either because of the nature of the proceeding or the pressure of time for preparation and presentation, or for both reasons. While the situation, rate, industrial, and commercial, was as to some commodities stated rather fully, many important adjustments were treated fragmentarily or without the presence of opposing or competing commercial rivals. In order to expedite the proceedings, the carriers generally abstained from cross-examination and made little attempt to rebut testimony which bore directly upon relatively minute parts of their proposals, so we do not know their position as to much that went in unchallenged.

The consequence is that while we have a voluminous record, careful inspection shows it is not at present desirable to attempt to convert this proceeding into a general investigation of the justness and reasonableness and the non-preferential and non-prejudicial character of the whole rate structures of the United States applicable to numerous individual commodities."

[illegible]

[illegible]

[illegible]

And omitting the balance of that paragraph, I read:

"There are many commercial relations which the adjustments already allowed by us or proposed by the carriers would necessarily disturb temporarily, but which would be capable of correction within a reasonable time. There are also other situations where the allowance of any increases of substantial size must disturb pre-existing relations beyond the possibility of remedial correction so as to maintain the former competitive status."

(Page 14663 follows)

Now, this is the point and it is a point I wish to make, that there should be shown on the part of the petitioners and on the part of the carriers a willingness to do the things which are mentioned here which, I submit with respect, has not been shown by the carriers in Canada:

> "We have the assurance of the petitioners of their intention to provide by voluntary discussion and co-operation with the shippers and representatives of markets, to devise and endeavour to put into effect such measures as will restore former competitive relations as completely as possible. We expect full and prompt compliance with these representations in the spirit of the proceedings. Restoration of trade relations should not be made an excuse for further increasing revenues or of bettering the competitive situation of the carriers. As in previous cases of this character, we tender the good offices of our staff in negotiations or advice as to technical features. Further, the remedies provided by the Act in the way of petitions for modification of our findings, complaints, seeking reparation, and petitions or complaints for re-adjustments or for further relief will be available."

THE CHAIRMAN: Mr. Smith, what is meant there by "competitive relations"? Is that between two railways?

MR. SMITH: I think also between markets too.

THE CHAIRMAN: That is what I wanted to ask you.

MR. SMITH: I think it means both market competition and railway competition.

THE CHAIRMAN: You mean market competition as between shippers from different points?

MR. SMITH: That is right.

THE CHAIRMAN: That is one thing?

MR. SMITH: Yes sir.

MR. EVANS: I was just going to perhaps help your lordship. The Board in the 21 per cent Case in its Judgment deals at Page 57 and one or two pages following, with what is termed there "so-called competitive rate relationships" and it says what the provinces contended were competitive rate relationships.

THE CHAIRMAN: What Judgment is that?

MR. EVANS: That is the Judgment of the Board of Transport Commissioners in the 21 per cent Case at Page 57 where it reviews contentions as to what constitute rate relationships of the kind that perhaps your lordship had in mind and it specifically holds that these rate comparisons that were put forward as establishing these relationships were in effect not competitive rate relationships. It says at the conclusion of that little paragraph on Page 58:

> "These rate differences as stated resulted from the rate increases and reductions made and certainly cannot be properly described as competitive rate relationships."

COMMISSIONER INNIS: What date is that document you are reading from, Mr. Smith?

MR. SMITH: The first Judgment which I have read is dated July 27, 1948.

COMMISSIONER INNIS: Do you know how the railroads carry out the proposals suggested?

MR. SMITH: I was going to read the following Judgment in August 1949, last year.

THE CHAIRMAN: We will have to be very careful when we run across these words "competition" and "competitive". Especially in the United States there would be great competition

among different lines of railway to get the carriage of goods to a certain market. That is one kind of competition. Another kind is the competition between shippers located at different points who wish to arrive at the same common market. We will have to be careful as we proceed, not to get confused.

MR. SMITH: I am not endeavouring to confuse the issue.

THE CHAIRMAN: I know you are not.

MR. SMITH: But it is my submission that a careful reading of the passages which I have read discloses that they are referring to market conditions, relationships that are established as between different industries in a competitive position -- not the two railways. That is my reading at least.

THE CHAIRMAN: Well as you read it to me I thought it meant the other kind, competition between two different railways.

MR. SMITH: My submission is this. Mr. Commissioner Innis asked me if there were any further decisions of the Interstate Commerce Commission and I now propose to give a reference to the last Judgment which has been reported, namely Ex Parte 168 which was decided on August 2, 1949, and which is reported in 276 I.C.C. at Page 9.

First, I would refer to Page 17 of that Judgment where it is said:

> "With very few exceptions, the attitude of the shippers and public bodies appearing as protestants is one of forceful opposition to any further increase in freight rates and charges and many ask for the withdrawal and cancellation of the interim increases authorized in this proceeding. In general, their positions show the diversity of

interests, born out of competitive relations between localities and also as between commodities -"

That clearly shows, I submit, that it is market competition.

COMMISSIONER INNIS: They did not get very much co-operation?

MR. SMITH: I was going to read what they said, Mr. Commissioner Innis:

". . . that have characterized every general rate increase case -- magnified in intensity here as the cumulative effects of previous increases and the present proposals are felt more sharply. We need not detail these conflicting contentions, as their pattern is familiar."

And then reference is made to the earlier case of 58 I.C.C. and to Increased Freight Rates 1947 and at Page 111 (it is a fairly long Judgment) which deals with conclusions, it is said:

"For reasons already stated we consider it necessary, in carrying out our duties under Sections 15 (a) (2) of the Interstate Commerce Act, in the light of the direction of the national transportation policy of Congress,"

And one of those directions is that revenue cases be given priority.

"now to permit further increases in rates and charges to be filed and to become effective without suspension, at an early date. We are mindful of the showing made by protestants as to various rate adjustments, as adverted to in this report, and it is to be understood that our conclusion and the findings which follow will be without prejudice

to subsequent examination of the reasonableness and lawfulness of any particular rate or rate structure increased as herein authorized. Further, with respect to this phase of the proceeding, what we said in Increased Freight Rates 1947 (that is the case I quoted)".

And then they go on to say, and this I would like to emphasize:

"We may add that, as the petitioning carriers have the burden of initiating and maintaining rates that comply with the Act the burden is on them in good faith and with all possible promptness and in a spirit of co-operation to devise and suggest for the consideration of the shipping public the rates which in their judgment will correct malajustments."

COMMISSIONER INNIS: That is pretty much a repetition?

MR. SMITH: Yes, they reiterate that position. I would perhaps on the matter say this, as a result of my reading of the cases, that where the rate increase or percentage is a comparatively low increase, comparatively small increase, there has not been the same provision of exceptions as where there is a higher increase. But I do submit that the practice has now grown in the United States of prescribing a large list of exceptions, while apparently in Canada the exceptions, as is instanced in the decisions in these two rate cases which have just been decided, are extremely limited, and in previous cases there were other commodities which were excepted from the rate increases. But I suggest that is the situation.

Now, in this connection there was, I think, a valuable discussion during the examination of Mr. Forsyth

by Mr. Covert in Montreal as to what method could be adopted with respect to relieving from the effect of horizontal increases.

I refer, my lord, to the evidence in Volume 29, Page 5605:

"I do not know upon whom the burden of proof lay --"

Well, at least in this last judgment of the Interstate Commerce Commission they say the burden lies on the railways:

"but it seems to me that if the railways were before this Board asking for increased revenue and somebody said: you can get it, but you should not get it by a horizontal increase; if the Board of Transport Commissioners thought that some traffic statistics were necessary in order for them to determine whether, as a matter of fact, not merely as a matter of opinion, the only workable and practical method was the horizontal increase, then somebody should have been asked to produce those statistics and get them before the Board.

MR. COVERT: Q. Do you suggest it should be the railways in that case because they are asking for it?

A. I suppose, ultimately the railways are the people who would have to furnish it, because they are the only people who would have it.

Then I just want, in connection with that, to refer the Board -- I am not going to read all this -- but I want to refer this Commission -- I said to Page 51, but I beg your pardon; I mean Page 52, where,

at the bottom of the page, there is a discussion of rates to assist to develop industry. I think if we go right over them we will find there are a great many Judgments of the Board which are recited, --"

Perhaps that is getting away from the matter. I will now read a question which Mr. Covert puts at Page 5606:

"Q. I think, Mr. Forsyth, that they have the power. There is no question that they have the power to give specific increases and to deal with them. I think they did that in the Eastern Rates Case in 1916 but my understanding of this last case is that it was regarded as an urgent revenue case and that the money was needed quickly."

Then Mr. Covert asked:

"Would it be a fair suggestion to carry out what seems to be your idea, that perhaps they could have granted, let us say, the 21 per cent figure for a definite fixed time, until the railways should come in and say: Experience has shown us that such-and-such rates should be changed. Is that what you have in mind?

A. What I had in mind was, of course, the railways must have revenue. We cannot expect them to operate without it; and what I had in mind was that rather than commit themselves to a policy of an increase that had certainly been disapproved by many authoratative bodies, it might have been better if they had adopted some temporary means such as you suggest . . ."

I do not quite agree with this:

" . . . and ordered a higher rate of increase than 21 per cent . . ."

I do not think that that quite necessarily follows:

". . .for a definite limited period of time, and to say to the railways: You will be coming back to us at the end of that time with information.

For instance, these traffic statistics, which, apparently, they never got, you will bring those back to us and we will see what the effect of a horizontal increase is going to be. Give us some statistics in which we can appreciate that situation."

Now, I think that is closely in line with what was suggested by the Interstate Commerce Commission.

THE CHAIRMAN: I think you should develop that to-morrow morning, Mr. Smith.

---At 4.45 p.m. the Commission adjourned until tomorrow, Thursday, February 9, 1950, at 10:30 o'clock a.m.

ROYAL COMMISSION
ON
TRANSPORTATION

EVIDENCE HEARD ON

FEB 9 - 1950

VOLUME

72

Please make the following correction in Transcript of Evidence

Vol.	Page	Line	Correction
72	14501	2	'and those charged' should be 'and thus the charge'

ROYAL COMMISSION ON TRANSPORTATION

Index Page #90

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Ottawa, Ontario,
Thursday, February 9, 1950.

MORNING SESSION

THE CHAIRMAN: Very well, Mr. Smith.

MR. SMITH: My lord, when the Commission adjourned yesterday, I was dealing with the matter of horizontal increases, and my last reference was with respect to the evidence given by Mr. Forsyth in Montreal.

I had previously referred to the late decisions of the Interstate Commerce Commission with reference to the methods which had been adopted to alleviate or to afford relief against the effect of horizontal increases.

It is, I think, fair to say that various methods have been used. For instance, upon reference to some of the decisions of the Interstate Commerce Commission, it will be found that, in certain cases, where there is a horizontal increase, certain commodities took a lesser increase.

For instance, in the case known as Ex Parte 123, which is reported in Volume 266 I.C.C. at page 41, there was a general increase of 10 per cent authorized with some exceptions. But there was a specific group of commodities, including agricultural products, on which the increase was 5 per cent.

THE CHAIRMAN: What is that?

MR. SMITH: On which the increase was only 5 per cent.

THE CHAIRMAN: Was it still horizontally applied?

MR. SMITH: It was still horizontally applied, yes. That is a case where they used a lesser horizontal increase in respect of certain commodities.

THE CHAIRMAN: But it is still horizontally applied?

MR. SMITH: Yes, it is still horizontally applied; but the impact of the horizontal increase is not as great because it is lessened by the lower amount. In other cases they adopted a flat increase in certain commodities instead of a horizontal increase.

THE CHAIRMAN: Is that not the case with respect to coal in Canada?

MR. SMITH: That is what was done in the present application before the Board.

THE CHAIRMAN: Does that system appear to you to be a reasonable and convenient one, and better than the horizontal?

MR. SMITH: Yes.

THE CHAIRMAN: I ask you that because you will remember that in Saskatchewan we received protests from a number of the coal producers that these increases had prejudiced them in the markets.

MR. SMITH: No.

THE CHAIRMAN: In favour of their more distant competitors in Alberta getting, let us say, into the Winnipeg market.

MR. SMITH: I am looking at it from the other aspect, perhaps, my lord, from the aspect of the distant producers.

MR. O'DONNELL: It all depends upon whose ox is gored.

MR. SMITH: However --

THE CHAIRMAN: The question is, that if you are to recommend the abolition of the horizontal system, you must devise another which would produce the same results and which would be fairer on the

whole to the shipping public than a horizontal.

MR. SMITH: I shall not go so far as to advocate the abolition of the horizontal increase in its entirety. But what I am submitting is: that there are certain commodities and certain shippers, and those certain shippers have to be given relief against the effect of a horizontal increase, particularly with respect to long haul traffic, and with basic commodities, including foodstuffs; and I think that has been the endeavour of the Interstate Commerce Commission, to alleviate against the results of the horizontal increase.

It is quite true, my lord, that the money must be found in some way. But it is a matter of the distribution, how the increase is borne, and I think the broad principle that rates must be just and reasonable. If the railways are to get an increase, then the increase must be so distributed that the results are just and reasonable to shippers all over Canada.

It is a matter of the distribution of the increase that bears heavily upon the shippers and producers in the extremities of Canada, and particularly with reference to basic commodities.

I was just endeavouring this morning to point out what I have suggested would be a measure of that protection so that the rates would be just and reasonable, by referring to the practices which have been adopted in the United States, where the matter has been discussed for many, many years, as is indicated by the judgments from which I read.

THE CHAIRMAN: You mean a system of charging less on certain commodities?

MR. SMITH: Yes, my lord.

THE CHAIRMAN: But that does not remove the discrimination of which the localities complain?

MR. SMITH: Yes, my lord, I submit that it does, where there is an effective increase. For instance, if we adopt Mr. Forsyth's suggestion in connection with the shipment of steel from Sydney to points in central Canada, that the horizontal increase shall not affect the relationship which existed.

THE CHAIRMAN: That is, it would not give relief to the grievance expressed by simply saying: Your increase will remain horizontal, but it will be less than that provided.

MR. SMITH: Perhaps I may have confused your lordship. I was not suggesting that. I was just dealing with the question of the particular effect of horizontal increases; and I pointed out that in the United States there were various methods which had been adopted.

In the case to which I just referred, it was a lesser horizontal increase. That was one method which was dealt with.

In later decisions, they adopted other methods, as in the case of coal in this present case. There was a specific amount, rather than a horizontal increase.

Perhaps I had just better refer your lordship to that case. I do not want to prolong the discussion, because the cases have, I think, to be read in the light of the circumstances.

I referred to the decision in Ex Parte 123. That was followed by a decision in Ex Parte 148, in which there was an increase.

THE CHAIRMAN: Where is that case reported?

MR. SMITH: It is reported in Volume 248 I.C.C. 545, and in 255 I.C.C. 357, and also in 256 I.C.C. 502. And in that case the same practice was adopted as in the earlier case to which I referred. There was an increase of 6 per cent, a general increase of 6 per cent, with certain exceptions and on certain basic commodities the increase was only 3 per cent.

Now, the next case in which the question of the horizontal increase was raised was Ex Parte 162, which case is reported in 264 I.C.C. 695, and again at 266 I.C.C. 537, and again at 268 I.C.C. 169 and 269 I.C.C. 418.

In that case the applicant railways made themselves a large number of exceptions from the general increase; and that case has been referred to already in the evidence of Mr. Forsyth, where he suggested --

THE CHAIRMAN: Did they all show the same result with the horizontal increase which was made less on certain commodities?

MR. SMITH: Yes.

THE CHAIRMAN: That does not give relief to the point at all. The point is that all competition between localities such as in the case of the steel manufacturers who appeared before us, or in the case of the potato shippers, it does not matter how low you make the increase because, if it is horizontal then, those who are further away from the market say that the limitation handicaps them.

MR. SMITH: There are two conditions, I think, which enter into the question. There is the question of distance and the question of the commodity

itself; and I submit that the tendency of the American decisions and of the American practice is to relieve against the effect of the horizontal increases first on the long haul traffic as against the short haul traffic; and secondly, in respect of certain basic commodities, such as iron ore and agricultural products of all kinds.

COMMISSIONER ANGUS: Is there a difference between charging a lower rate on the initiative of the railways, possibly because they feel that the traffic would not bear a higher rate? That would be something within their own commercial interest?

MR. SMITH: There is an element of how much the traffic will bear, Commissioner Angus.

(Page 14681 follows)

COMMISSIONER ANGUS: The difference between that and the concession made in order to go easy on an industry in a precarious position. There is an overlap between the two.

MR. SMITH: There is, as you point out, Dr. Angus, the matter of the interest of the railways themselves, but that is a matter for them to consider whether there will be a decline in revenue, if they raise the rates to such a point where the traffic will be reduced and the net result will be a loss to the railways. That is a matter for their own protection. They consider that, but there is over and above that also the interest of the shipper and the producer which the Commission, particularly in the United States, has built up a practice of protecting.

COMMISSIONER ANGUS: I understand that Mr. Smith. My question is really this. If the initiative comes from the railways in asking for a lower increase on some commodities than on others, is it a natural inference that that is because it is in their commercial interest?

MR. SMITH: Well, I suppose self-interest is perhaps one of the motivating influences, but also I think the railways realize there is a duty upon them. As I understand it the Commission impressed that upon the railways in the judgment to which I referred, that it is essential that rates be just and reasonable to everybody concerned apart from any question of revenue to the railways.

For instance, answering the point which has been suggested to me by the Chairman, there are numerous instances where there has been granted a

percentage increase subject to a maximum of so many cents. For example, in the case of citrus fruit from California and Florida, they are kept on a relative basis.

THE CHAIRMAN: Relative as between localities or as between prices, or what?

MR. SMITH: It would be between localities, to keep the California fruit growers and the Florida fruit growers on a parity.

THE CHAIRMAN: What case was that?

MR. SMITH: I think that if your lordship refers to the cases, in nearly every case from 16 down that practice has been adopted. I think I can find 162. I will give you that reference in a moment, my lord. For instance, my lord, in the case of Ex parte 162 reported in 266 I.C.C. 173 at page 619.

THE CHAIRMAN: It goes over from 173 to 619 ?

MR. O'DONNELL: 537, 266 - 537 at 619.

MR. SMITH: At page 537.

THE CHAIRMAN: At?

MR. SMITH: At 619, there is an increase of 15% allowed on products of agriculture, and at page 620 on citrus fruits and other fruits and vegetables subject to a maximum of 13 cents per hundred pounds. So that is the effect of putting the California and the Florida producers on a parity. That was the object of that and that I think has been followed.

MR. EVANS: Not on a parity.

MR. SMITH: Not exactly on a parity, but on a comparitive parity, if I may put it that way, in a position in which they can compete with each other.

Now, it will be found in the decisions to which I have referred, that that practice has been adopted and I don't propose now to elaborate on that branch of the argument. I have been endeavouring to put some constructive suggestion before your lordship and gentlemen because I realize that just saying horizontal increases are bad in themselves does not advance the situation very far if I cannot suggest some sort of remedy. My suggestion is that the whole question of horizontal increases needs to be thoroughly studied, and that there should be a declaration of policy embodied in the Railway Act with respect to the question of horizontal increases, so that the Board has a compass, so to speak, to assist them to steer through the rather complicated situation which arises when a horizontal increase is effected and as a result rates are effected which are not just and reasonable to many shippers and many producers, particularly to those who have to rely upon long haul and also who deal in basic commodities.

THE CHAIRMAN: The Board is not lacking in power now.

MR. SMITH: No, the Board is not lacking the power now, but the Board has not considered the matter in the various judgments to which I have referred, in the recent judgments, perhaps because they have not had time, perhaps because they have not the available statistics, they have not the available

information apparently. It is my submission that the practice which has been adopted in the United States should be followed and that not only should the Board be making a study of the impact, a constant study - - and apparently that has been undergone in the United States for many years and they are gathering up information and statistics and the railways are co-operating and also supplying this information, and as a result there is a large body of information which apparently is not available in Canada on this question.

COMMISSIONER ANGUS: Did the provincial governments take this position in the 21 Percent. Case, I mean, did they produce a list of commodities and say : "We would like you to establish maxima for these even if it means that the general percentage will go higher"?

MR. SMITH: There were no specific suggestions made as to specific rates on particular commodities. The evidence was perhaps rather of a general nature. There was much said about the effect of a horizontal increase upon the industry generally, particularly industries in the provinces in the extremities of Canada, and certainly there were hearings throughout the provinces. I was not in the 21 Percent. Case , but as my recollection goes, there were certain witnesses called who gave evidence that horizontal increases would have a prejudicial effect upon their business; but I don't think, answering your question directly, Dr. Angus, that they made any specific suggestion as to the remedy.

COMMISSIONER ANGUS: Apart from a specific suggestion, did the provincestake the position that

"we think the Board should accede to this type of request and, if necessary, make the increase in other rates greater".

MR. SMITH: Well, of course, the provinces rather strenuously opposed a general increase.

MR. O'DONNELL: Said there was no need.

MR. SMITH: That was the position they took, but I think the alternative position they took, if I may put the case for the Provinces at a time when I was not there, they said that if there is to be an increase it should not be an increase which will bear prejudicially upon our industry and our producers. Perhaps Mr. Frawley, who was present, can speak with better authority.

THE CHAIRMAN: Having regard to what, to their distance from their markets?

MR. SMITH: Due to their distance from the market, yes.

MR. FRAWLEY: I think, sir, in a brief word I can reply to Mr. Commissioner Angus, because I did take some time to deal with the question of horizontal increases in my argument in the 21 Percent. Case. My position very simply was, first, assuming there must be an increase of some kind, that it must be realized in the following fashion. First, that the competitive rates must be thoroughly overhauled and increased and as many dollars as possible obtained from the increase in competitive rates. Then there must be an increase in the level of rates in Eastern Canada to bring them up to the level of rates in Western Canada.

The second point, that is, the distributive rates, I said there must be an increase in the town tariffs to bring them up to the situation in the west.

That is another method to exhaust the situation and get all the dollars ordered by the Board.

Finally, I said, if at that state there is still something unrealized in the award which the Board has given, then there must be a horizontal percentage increase subject to a maximum applied in the case of the long hauls and the basic commodities.

I referred to various judgments of the Board itself, where in earlier cases they had applied the percentage in the west and had exempted wholly or in part certain basic commodities from any general increase.

So, at least, sir, I was taking a consistent position. First, to find all the money that has been ordered for you from the other rates; then in the last analysis, if you must have an increase, it must be horizontal but subject to governors, subject to maxima with respect to the long haul traffic and the basic commodities, in which my part of Canada was largely interested. I think that answers the question as to the position.

MR. EVANS: Perhaps I might just say one word, because I don't think Mr. Frawley, with all respect to him, has told quite all the story.

MR. FRAWLEY:: All the story of my argument.

MR. EVANS: Yes, but to begin with no one sought to define long haul, and therefore, there was no point of departure from which you could say that in a particular case the rate should have a maximum based upon a particular length of haul. Now then, everybody who came forward in objecting to the horizontal increase just objected because they were further from their market than somebody else, and the only case where there

was no horizontal increase, in the case of coal, coal operators in the west came forward to object to the flat increase. There was no clue, in my submission, anywhere in the provincial submissions, and there was only one witness who did say what he wanted and that was a witness from British Columbia, when it was put to him, if he were competing in the Toronto market in some commodity produced in Vancouver, would he expect the maximum in cents per hundred pounds to be the equivalent of the percentage increase for as short a distance as Hamilton to Toronto.

(Page 14690 follows)

And he said: "If that is what it means, that is what we should have." I can give the Commission the reference to that evidence. He is the only man who had the courage to come out and say exactly what he wanted.

MR. BRAZIER: I might say, my learned friend, Mr. Evans --

THE CHAIRMAN: Who is this man, Mr. Evans?

MR. EVANS: I will be glad to look it up, sir.

MR. BRAZIER: I was just going to advise the Board I think it was Mr. Robson who appeared on behalf of the British Columbia Lumber Association at the hearing in Vancouver, my lord.

THE CHAIRMAN: At our hearing?

MR. BRAZIER: No, at the hearing of the Transport Board and the lumber industry in British Columbia asked the Board at that time to adopt the same formula which the Interstate Commerce Commission had just recently adopted so far as the lumber industry of Washington and Oregon is concerned, that was, giving a percentage increase up to a maxima and a flat amount from there on and I think Mr. Robson gave the change that would come about in their competitive position in markets like Buffalo and New York as a result of the Canadian Board adopting one method of granting increases and the Interstate Commerce Commission granting a different form of increase to their competitors just across the line. I think he made a very specific proposal as to what should be done so far as the lumber industry was concerned.

THE CHAIRMAN: What was his proposal?

MR. BRAZIER: The same as the Interstate Commerce Commission had just adopted.

THE CHAIRMAN: That is, he proposed that his products should get into the same market as the United States

products would get into without paying any more?

MR. BRAZIER: That the amount of increase should not be greater than it was in the United States.

MR. O'DONNELL: And that the additional revenue required could be found from somebody else. Every one had that idea, that some one else should pay.

MR. BRAZIER: I do not think, with deference, Mr. O'Donnell, that question ever did come up. It was never considered or even suggested that it would require a higher percentage from everyone else. That problem was not discussed.

MR. O'DONNELL: I was merely going to say, my lord, that the Commission will find that the Board reviewed all those questions and all the suggestions concerning different amounts on different commodities. At Pages 60 and 61 of the 21 per cent Case, there are a whole array of them listed and finally, at Page 65, after considering the whole situation, the Board said:

> "Upon a consideration of the whole situation, I think that in this case a general increase in freight rates should apply equally throughout the country."

And further it said --

MR. FRAWLEY: Where did they say that? That is the part that bothers me.

MR. O'DONNELL: Look at Page 65 and it is easy enough to find:

> "While there are a number of individual cases where discrimination in rates is alleged to exist and it may be that some of these require special and separate consideration, on another occasion."

And the evidence before this Commission is that nobody has yet gone back to the Board to say that he has been

discriminated against or that he has any case. Now, insofar as handling this particular matter --

THE CHAIRMAN: Some of them have come before us?

MR. O'DONNELL: Oh yes, that is quite true, but I was merely pointing out in fairness to the Board's Judgment that the rights of all those people were expressly reserved. If they were discriminated against they could go and make a complaint.

THE CHAIRMAN: But that is not what you were pointing out a moment ago. The Board does not lack power?

MR. O'DONNELL: Not at all, and the Board has done, in cases where it thought fit to do, what Mr. Smith has said. If the Commission will look at the Judgment in the 15 per cent Case in 1918, there the Commission will find all the variations that are set out in this Interstate Commerce Commission case. We have had this Interstate Commerce Commission Case three times. We went into all of those in detail. But in the 15 per cent Case, the Board will find that on flax seed in some cases they increased it two cents per hundred weight from Western Canada to Lake Superior ports; in other cases, flax seed and flax seed products were increased 15 per cent with a maxima of 15 cents per hundred weight, that on lumber they got it in some cases with a maximum of three cents, others four cents per hundred weight and apart from that there were general increases, there were flat increases and the variations and combinations referred to. The Board has the power to apply it if the facts warrant it.

THE CHAIRMAN: Then the point seems to me to be whether the Board should have its power curtailed in that respect?

MR. FRAWLEY: What I object to on behalf of the Province of Alberta are these words which my friend has just read where there might be discrimination and what might be alleged. As far as I am concerned that is not important individually. The matter should be discussed in principle by the Government of the Province of Alberta. It is a sort of divide and conquer device which is designed to limit it to the individual person to take his case to Ottawa with all the expense involved. We now appear before this Commission and want to discuss the general principle of a horizontal percentage increase.

THE CHAIRMAN: Do you think that Reference means leaving it to the individual?

MR. FRAWLEY: Yes, my lord. There may be a number of individual cases where discrimination in rates is alleged to exist. I think that is what they mean subject to what I think is their own interpretation in respect of that word "discrimination" upon which we have sat many hours before this Commission and upon which we expect some salutory explanation. We want the Board directed that there must be no flat horizontal percentage increase, with nothing else, with no governing maxima applied.

If there must be a horizontal percentage increase in the last analysis, if there must be, then it can only be with maxima applied in cents per hundred pounds.

THE CHAIRMAN: Where do you draw the line?

MR. FRAWLEY: I would be foolish to say that I could tell the Board just where that long haul line should be drawn.

THE CHAIRMAN: I suppose you would have to on an application. How are they going to know?

MR. FRAWLEY: The Board would have to -- somebody would have to determine that at some time, certainly, sir, and at the moment I can only discuss the matter in principle here.

THE CHAIRMAN: But I mean, I am fancying now that you are before the Board and then they would ask you: "Where does your long haul go?"

MR. FRAWLEY: Then that would have to come. Once the principle is there, once the Board is directed by Parliament or by a recommendation of this Commission that there must be no flat horizontal increase and nothing else, then we should go into the Board prepared to argue the point, sir.

MR. O'DONNELL: I would just ask the Commission what,in the words of the Chief Commissioner in the 21 Per Cent Case, he would suggest as a workable and practical method of dealing with the question in order to provide the additional revenue required by the railways? What other method would he use in order to get the revenue the railways needed any higher? My friend would suggest this, probably, that each one would have to be looked into and compared with some other rate (and there are millions of rates) and see if the increase was going to adversely affect another particular shipment. It is not workable and practical and I would suggest to my learned friend that he cannot answer that question as put by the Chief Commissioner.

COMMISSIONER ANGUS: Might I round off my question by this one? Supposing that there were a number of individual applications and that they were successful, was the suggestion that the 21 per cent had discounted those in advance or that the railways would have adequate revenue anyway or was the suggestion that if there were a

number of those applications, the 21 per cent would be increased to 22 per cent or 23 per cent to make good the revenue?

MR. O'DONNELL: It would have to; there is no doubt about that.

COMMISSIONER ANGUS: Or was the railway just taking the risk of those coming forward? It seems to affect the atmosphere.

MR. EVANS: Perhaps I could answer that, Dr. Angus, by saying this, that the first step the Board took was to determine the revenue deficiency and how much money had to be made up and that they then would decide on the percentage of increase or that it would be advised that having found what we need they would have to take into account the difference between the general application of such an application as my friend sets out and the general application of a percentage increase.

COMMISSIONER ANGUS: Would they go so far as to do that in an individual case, Mr. Evans? Supposing an application were made of the type that they invited and that it were successful and that the rates were reduced and the railways' revenues were diminished, would the Board in its same Judgment say: "Well, this is going to be 21.1 per cent now", and leave the railways to alter all their tariffs and so on to make up that leeway?

MR. EVANS: I do not think so. As a practical matter I think the Board did the proper thing because it said: "We recognize that this is far too specific a question to get into in a revenue case and we are asking people to come forward and make their separate submissions with regard to those cases wherein justice can be shown". Now, none have done that and they still have this horizontal increase before them and our friends in the Provinces

have not seen fit to accept the invitation to make a representation to the Board in that respect. That is where we say this very question can be debated at length.

However, I did not come up here for that purpose; I came up to give the Board a reference to the evidence of Mr. Braidwood. He was then President of the Vancouver Board of Trade. That was in the 21 Per Cent Case and he gave evidence in Vancouver and his evidence, I think, begins about Page 7926 and I am not going to give you more than this. At Page 7970 this question and this answer were given:

> "Q. So, if you increase by three cents a ten cent rate from Oakville to Toronto, you would increase by three cents the $5.00 rate from Vancouver to Toronto?
>
> A. If that is the way it would work out, that is our contention."

Now, that was almost exactly what I told your lordship a moment ago.

MR. MACPHERSON: Might I say, Mr. Chairman, in connection with this general discussion as to submissions in the 30 Per Cent Case and the 21 Per Cent Case that there were submissions by the provinces. Saskatchewan submitted, for instance, that it objected to the horizontal increase as requested by the railways. It suggested further that in the freight rate structure in the country there were peaks and there were valleys and that we had established this in the evidence that had been submitted and we argued that before there was a general horizontal increase, a flat increase which would accentuate disparities as they existed, that there should be first a filling-up of the valleys and the

discussion of the matter of competitive rates and that this should be done before a flat increase could be applied and that, in any event, if one were applied then consideration should be given to distances from market, long haul and that sort of thing.

I submit, my lord, that what this discussion points up is probably the necessity of a strengthening of the statistical and economical structure of the Board of Transport so that much more could be done with information available to do it and much more available which would be of assistance to the Board in coming to decisions in respect of applications that are made.

MR. EVANS: I find that I have mis-stated a fact that I wish to correct. I said no one had come forward. I was wrong; the British Columbia Lumber Industry has come forward to make representation in the application for a horizontal increase.

THE CHAIRMAN: What has happened to their application?

MR. EVANS: I think it is pending as far as I know.

THE CHAIRMAN: Mr. MacPherson then seems to think that no statutory amendment is necessary. That is what I gathered from what you said, that if the Board is better qualified it could go on with its present powers?

MR. MACPHERSON: That is correct. I do not think there is any amendment required to the Railway Act but I do think that probably a recommendation as to the strengthening of the Board's research powers and activities would be in the interests of the shipping public.

THE CHAIRMAN: That is one thing, but I think Mr. Frawley goes further than that. You would have them directed if possible, probably by legislation to do certain things or not to do certain things without doing something else?

MR. FRAWLEY: There should be a declaration of policy, sir.

(Page 14702 follows)

THE CHAIRMAN: There is no use of us making a declaration of policy. Our task is to recommend statutory changes.

MR. FRAWLEY: With respect, sir, I think this Commission could well make recommendations short of a change in the statute which will have a great effect in the administration.

THE CHAIRMAN: Any recommendations we make will have to be to the governor in council.

MR. FRAWLEY: Quite.

THE CHAIRMAN: We might make the type of recommendation Mr. MacPherson says he would be satisfied with, but would you be satisfied?

MR. FRAWLEY: Yes, quite so, there is no difference.

THE CHAIRMAN: From what you said just now I took it that you thought the Board should be directed not to make horizontal increases in certain cases without mitigating the effect of the increase on the long haul.

MR. FRAWLEY: Those were exactly the words I used. The question is whether they should be directed by parliament in a statute or whether there should be merely the views of this Commission, the recommendations of this Commission as to the effect of the horizontal increase and the injustices which it perpetrates on long hauls of basic commodities. I would be content with that. The Board would follow those views and recommendations.

THE CHAIRMAN: What I was going to suggest was that you draft an amendment.

MR. FRAWLEY: As to that, quite seriously I think the powers are there. There is one matter I want to call --

THE CHAIRMAN: There is no doubt the powers are

there. There is no need to discuss that. In fact they are too much there. You say the Board goes too far in doing certain things and that these powers should be restricted in some respects and curtailed.

MR. FRAWLEY: Yes.

THE CHAIRMAN: The only way to do that is by legislation in order to make it effective at all.

MR. FRAWLEY: With respect I think the Board has simply said that this is the easiest way to do it. Certainly it is very easy of application. The railways say they need the money quickly and they say we will give it to them quickly. With great respect I say that it would take time; as my friend Mr. MacPherson says, it would take quite an intelligent survey of the impact of these rates on various industries. With all of that I agree. That is the difference between the I.C.C. machinery and the Board of Transport Commissioners. The I.C.C. has many bureaus and officers, and they look into these matters, and we have none. I take it that is what Mr. MacPherson is suggesting that they want, and I think it is an excellent suggestion. It does not need any statutory power.

THE CHAIRMAN: Let us take a given case. Let us take the case of another application for an increase, and let us suppose that the Board were to say, "We have a very well equipped bureau of statistics and statisticians and we have exhausted all these inquiries and we still think we must grant a horizontal increase." Would you be satisfied?

MR. FRAWLEY: I would have to be. With great respect, we have not had that here. Then there is the question of onus which Mr. Smith called to the attention of the Commission yesterday. I should like to read from

276 I.C.C., Ex Parte 168, page 9, at page 112:

"We may add that, as the petitioning carriers have the burden of initiating and maintaining rates that comply with the Act, the burden is on them in good faith and with all possible promptness and in a spirit of co-operation to devise and suggest for the consideration of the shipping public rates which in their judgment will correct maladjustments."

I think those words are broad enough to put the onus upon the railways, and I think the Canadian railways have the same onus as the I.C.C. think the American railways have as to suggesting what limit should be put upon a haul from Toronto to Grande Prairie, Alberta, a long haul of that sort, and that the receiver of freight in Grande Prairie should not have to bear the 21 per cent rate increase as the man in Hamilton does receiving goods from Toronto. That is our case.

THE CHAIRMAN: Mr. Frawley, the point is that this affects not only you but the maritime provinces as well in another direction.

MR. FRAWLEY: Exactly.

THE CHAIRMAN: I would invite you and any others concerned who think there should be some statutory direction given to the Board to draft it for us and let us see what you want.

MR. FRAWLEY: Thank you.

MR. BRAZIER: Could I say a word in reference to Dr. Angus' last question?

THE CHAIRMAN: And of course any draft will be submitted to counsel concerned.

MR. FRAWLEY: Yes.

MR. BRAZIER: Dr. Angus' last question was as to

whether the Board would make any provision for further increasing the percentage if adjustments were made because of the impact of the horizontal increase. I may say that in the 21 per cent case the province of British Columbia argued that the increase should not be applied as against rates in that province because of the existence of the mountain differential which in effect would make them higher dollar and cent increases in that province. We were told in the judgment that we would have to make a further application to have the mountain differential removed, which we did. On that application the railways did give evidence as to what revenue they would lose as a result of the removal of the mountain differential and suggested what general increase should be made in all rates in order to compensate them for that loss. I think the percentage increase that was suggested by Mr. Jefferson was four or five per cent.

MR. FRAWLEY: About two per cent.

MR. BRAZIER: Two per cent. In taking off the mountain differential the Board refused to give them any compensating general increase in other rates.

MR. O'DONNELL: But the whole matter was back before the Board on the recent application, and the fact the mountain differential has been removed is reflected in the figures put before the Board.

MR. BRAZIER: That may be, but on that specific application they refused to grant it.

MR. FRAWLEY: If as a result of giving any area of Canada relief in rates it will require an increase in rates otherwise, the province of Alberta is quite prepared that that should be. We associated ourselves with the province of British Columbia in the removal of the mountain differential. If that means a loss in revenue, and if it

means a new general level of rates we are content to pay it.

MR. O'DONNELL: That is what you are going to get.

COMMISSIONER ANGUS: What I was driving at is this. Are the railways sufficiently confident that their revenue will be protected to be as co-operative as you want them to be? It seems to me if they were completely confident that revenues were going to be kept up to an adequate standard, and if it was merely a question as to whether certain rates should be adjusted, their opinion as to that adjustment might be extremely valuable. On the other hand, if they were not confident that they were going to get the revenue their opinion might be biased.

MR. FRAWLEY: The province of Alberta has perhaps been the loudest in its cries against the injustices in the Canadian freight rate structure, but the position that Alberta has always taken is that we have said, "Give us a freight rate structure where you have removed discrimination, removed injustices of the mountain differential, removed injustices of the long and short haul. Do these things and we will gladly pay whatever amount the railways of Canada need." That has been our position throughout. We do not want the railways to bear the burden of removing these injustices. We want the rate structure straightened out, and I am happy to have the opportunity of stating the position of Alberta in that respect.

THE CHAIRMAN: Whom do you mean by "we", the shippers of Alberta?

MR. FRAWLEY: The shippers and receivers of freight of Alberta. We will be glad to pay whatever is necessary to keep the railways in the best possible

operating position once the injustices in the structure have been removed.

THE CHAIRMAN: Discrimination.

MR. FRAWLEY: Discrimination, everything; "discrimination" is the large word I use.

MR. EVANS: The injustices are apparently not so serious that my friend would make his representations in the general inquiry which is now proceeding.

MR. FRAWLEY: My friend has had the answer to that ten times and I will give it to him for the eleventh time. I will go to the Board after this Commission has straightened up and laid down the principles which the Board is to follow. It is a bit annoying to be told that I do not want to go to the Board. The position of the Government of Alberta is known to all the world. We will not go to the Board of Transport Commissioners for a general freight rate investigation until new principles and perhaps new legislation have been evolved as a result of the work of this Commission. Our position is very simple.

THE CHAIRMAN: Well, Mr. Smith, we have borrowed your time.

MR. SMITH: Mr. Chairman, Dr. Angus asked me as to the contentions which were made before the Board on the 21 per cent and 20 per cent cases. I cannot do better than refer Dr. Angus to what is said in my brief, at pages 36 et seq.,as to the contentions which were made both in the 21 per cent case and the 20 per cent case. The contentions are summarized there. I think if Dr. Angus looks at those references he will find what was said. I think our position is accurately stated there. I do suggest there is a difference -- and this is all I have to say on the question -- in the position taken by the railways

in the United States and the position taken by the Commission in the United States contrasted with the position taken by the railways in Canada and the position taken by the Board on this very important subject. I pointed out yesterday that in the decision from which I quoted the Commission said:

> "We have the assurance of the petitioners of their intention to proceed by voluntary discussion and co-operation with the shippers and representatives of markets, to devise and endeavour to put into effect such measures as will restore former competitive relations----" That is the point I am stressing, competitive relations.

THE CHAIRMAN: What are you reading from now?

MR. SMITH: I am reading from the judgment of the Interstate Commerce Commission from which I read yesterday.

THE CHAIRMAN: Which one is that?

MR. SMITH: That is the decision in the --

THE CHAIRMAN: What isthe Ex Parte number?

MR. SMITH: Ex Parte 166, reported in 270 --

THE CHAIRMAN: What page are you reading from?

MR. SMITH: 455, at 270 I.C.C.

THE CHAIRMAN: You are reading from 270?

MR. SMITH: Reading from 270, yes, Mr. Chairman.

> "--to proceed by voluntary discussion and co-operation with shippers and representatives of markets, to devise and endeavour to put into effect such measures as will restore former competitive relations as completely as possible." Then they add: "We tender the good offices"---

THE CHAIRMAN: Restore competitive relations-- competition between shippers?

MR. SMITH: Between shippers, competitive relations between shippers as completely as possible, and then they add that the Commission tenders the good offices

of its staff in negotiations or advice on technical features.

I say, Mr. Chairman, with respect that that is not like anything that has been done in Canada. The railways have not given any assurance to the Board of their intention to restore previous rate relations, or anything of that kind. On the contrary the railways have taken the position that if the individual shipper does not like the increased percentage he has the right, under the Railway Act, to apply on the ground that the rates affecting him are unjust, unreasonable or discriminatory. Therefore I submit there is a very substantial difference in the attitude of the railways and in the attitude of the regulatory bodies.

I also join with Mr. Frawley in the observations which he has made with respect to horizontal increases and the positions taken by the provinces. I will consult with him with a view to submitting to this Commission a statement of policy which should, I suggest, be directed by the Commission either in the form of a direction of policy of itself, or as a statement of policy contained in the Railway Act somewhat similar to the provisions contained in the American statutes.

THE CHAIRMAN: In the American statutes.

MR. SMITH: Yes, and in other cases. For instance, in the Transportation Act there is a statement of policy, a general statement of policy. I quite appreciate that no one desires that the statutes be unduly restrictive. There has to be a wide measure of discretion in any regulatory body. I do not wish to advocate any measure would have the effect of unduly restricting the Board.

THE CHAIRMAN: We were told earlier there is a statement of policy in the United States legislation setting out, for instance, that it is the desire of Congress that --

MR. SMITH: Section 15(a).

THE CHAIRMAN: That shipping and railroads, and so on, all be put on a basis where they can continue to thrive. If you wish to have any statement by parliament on matters with which you are concerned now I do wish you would draft it for us. That is the best way to let us know exactly what you want.

MR. SMITH: Well, I said Mr. Frawley and I would consult in that connection and submit something for the approval of the Commission.

THE CHAIRMAN: You see the Railway Act already has many provisions about equality between localities, shippers, and so on. That is already embodied in the legislation. You had better examine what is already there first and then see whether anything more definite and broader ought to be recommended.

MR. SMITH: Yes, Mr. Chairman. I think possibly that is all I have to say about horizontal increases except that I did say earlier that there is a suggestion as to the retention of arbitraries. I do relate that to the question of horizontal increases. Later in my brief I make a suggestion at page 41 that:

> ". . . there should be a reduction in freight rates on goods, materials and commodities to be processed in Nova Scotia or to be used in the manufacture of products there, shipped into Nova Scotia from points outside the 'select territory' as defined in the Maritime Freight Rates Act."

I point out that:

"There are a number of producers and manufacturers in Nova Scotia who must obtain a large part of their raw materials of production, as well as containers to package their goods, etc. from points outside the province, and as a substantial part of the market for their goods is in central or other parts of Canada, they must then ship back the finished product and meet the competition of producers and manufacturers with relatively low transportation cost for raw materials and for the distribution of their finished goods."

I point out in the case of agricultural products that the importance of low freight rates on all articles entering into production costs cannot be exaggerated.

I am relating that submission to the question of horizontal increases, that the effect of horizontal increases should be cushioned by the application of these principles with respect to basic commodities, raw materials and food.

I would point out in the evidence of Mr. French of Sackville at page 7186 he did speak along the lines to which I have referred. On cross-examination he was asked this question by my friend Mr. Evans -- I am not sure it was Mr. Evans but I think it was:

"Q. And I am interested to know whether the purpose of that presentation is to indicate that you feel that you should be kept at all times on the same basis dollarwise in increased freight rates as your central Canadian competitors?

"A. No, we do not feel that. That would be unfair, but if the freight rate increase to the Ontario manufacturer bringing his pig iron from Hamilton or Sault Ste. Marie to Carleton Place is 40 cents we do not expect you to bring that a thousand miles more for 40 cents, but where they pay 40 cents we pay say $2.40. We do not expect you to carry it for 40 cents, but we think you should give us consideration and cushion the increase to the maritime industries so that we have a chance to survive."

I think I have said all I have to say on the question of horizontal increases. Now I wish to say something in passing on the question of co-operation and the Canadian National-Canadian Pacific Act.

(Page 14715 follows)

Well, this matter has been discussed at considerable length already and I do not propose to dwell at any length upon the matter except to refer the Commission to what is said in the brief, perhaps at too great length, with respect to the matter, at pages 44 to 50 inclusive.

There is no doubt that under the report of the Duff Commission there was a situation which required a definite solution.

I referred to paragraphs 210 and 211 of the Duff Report in which the obligation is stated and the weaknesses are pointed out, as follows:

> "210. We have emphasized the fact that the principal weaknesses of the past decade has been the failure of the railways to act together in their own interests and in the interests of the public. . . . . There must be joint action with a view to savings in the wider sphere."

With reference to savings in the wider sphere:

> "211. A statutory duty should be imposed upon the trustees (of the Canadian National Railways) as well as upon the Board of Directors of the Canadian Pacific Railway that, consistently with the provisions of the existing law and with the recommendations of this report and with the provisions of all reasonable services and facilities, they should adopt as soon as practicable such co-operative measures, plans and arrangements as shall, consistent with the proper handling of the traffic, be best adapted to the removal of unnecessary or wasteful services or practices, to the avoidance of unwarranted duplication in services of facilities, and to

the joint use and operation of all such properties as may conveniently and without undue detriment to either party, be so used."

And then the Act goes on to implement the recommendations of section 16, subsection 2 of that Act sets out with great particularity some of the measures, plans, and arrangements which should be adopted.

I would submit that this is a matter which requires study. I quite realize that this Commission has to make a report without undue delay, and that possibly they would not be able to make a study all over Canada as to measures which should be adopted. But I do suggest that there should be some body which should make that study and, if necessary, the obligation should be imposed upon the board to inquire into the matter, with reference to seeing what economies can be effected, and thereby reduce the financial requirements of both railways.

I would suggest that it is obvious that the Act has not produced the results which were forecast; and that some method of cooperation must be devised which can be enforced to bring about the results which were desired. I have no further submissions or comments to make at this time on that question.

There is also in my submission, at page 40, a reference to import and export rates from and to Nova Scotia ports; and my submission is that these rates should be maintained at such a level as to cause an adequate volume of Canadian import and export trade to flow through Nova Scotia ports.

It was, as pointed out in the National Transcontinental Act, one of the reasons for the construction of the National Transcontinental Railway that

traffic should flow through Nova Scotia, through Maritime ports; and we all know that the results which were expected have not been achieved. There have been various reasons for it.

This point was made in the brief submitted by the City of Quebec, and it was pointed out there that there was a statutory obligation which was imposed by the N.T.R. Act; but in any event, in a country such as ours, I suggest it is essential that the great ports, both on the Atlantic and on the Pacific, must be maintained and built up so that, both in time of peace and war, they can serve the country best.

What we find now is that the traffic which moves through the Maritime ports, not only due to the high freight rates, but also to other causes, is much below what should, in a country such as ours, be expected.

So I would, in this connection, adopt the statement contained in the contentions made in the memorandum of the Maritime Transportation Commission, and the page references to the transcript of evidence are referred to at the bottom of page 40 of my brief.

The suggestion which was made was:

> "Maritime port rates be adjusted at the earliest possible date so as to reflect, during the period April to November of each year --"

That is, just during the summer months of each year.

> "-- the relationships that existed with the port of Montreal prior to March 28, 1938."

Now, I thank you, my lord, for the consideration and patience with which you have listened to me. I told my witness that I would only be twenty

minutes, but I find I have taken a little longer than I expected.

I propose now to call a witness with respect to the question of accounting practices.

COMMISSIONER INNIS: I would like to ask you one or two questions, Mr. Smith.

You do not think that the Canadian Pacific-Canadian National Act reflects too closely the problems of the depression, and perhaps, is completely out of focus at the present time?

MR. SMITH: No. I think, Dr. Innis, it was due perhaps to the conditions at that time, but what I do suggest is: we do not know; we have not available information as to whether or not there has been any attempt made by the railways to comply with the provisions of that Act. That is information which is peculiarly within the council of the railways.

All I suggest, Commissioner Innis, is that some body, some independent body, make a study of that situation to see whether it is possible. You will find an analagous situation in the United States, and the point has been taken on the analogy which was taken by the provinces in this case.

We said it was a condition precedent that the railways, in a rate case, should establish that they had done everything; that they were efficient, and that they had done everything to eliminate waste.

Perhaps that was too extreme a position. But I find that the same position was taken by various bodies in the States, governmental bodies in that case, under the analagous legislation in the United States, which provides for coordination and elimination, and which is not all depression legislation, because, in

the United States, they have the temporary legislation, and then they have the 1940 Act, which is after the depression.

But the argument was made in these revenue cases, that it was a prerequisite that the railways should establish that point; and I propose to be fair, unlike the attitude which the Board adopted in this case.

The Commission said that that matter was too intricate a study to embark upon, using my own words, in a rate or revenue case. In other words, it required study.

If you desire, I will give you the reference to it.

COMMISSIONER INNIS: I think I understand it. I think we have that before us before.

MR. SMITH: Oh, I will give you the reference to it, in any event.

MR. EVANS: I think I put it on the record.

MR. SMITH: Thank you. I am very helpful when I wish to be helpful.

MR. O'DONNELL: In the last case Ex Parte 168, the I.C.C. refused the motion of the Secretary of Agriculture of the United States to institute an investigation as to the efficiency of the management of the railroads. The matter is discussed at pages 24, 31, of Volume 276 I.C.C.

MR. SMITH: Ex Parte 168 is the reference in question, at page 705. It is Volume 272 I.C.C. page 695, at page 705.

COMMISSIONER INNIS: One other minor point.

MR. SMITH: If I might be permitted, sir, the matter was again referred to.

THE CHAIRMAN: What is the page?

[illegible]

[illegible]

[illegible]

MR. SMITH: Page 705, my lord.

THE CHAIRMAN: We have Ex Parte 168, Volume 276 I.C.C., page 9.

MR. SMITH: That is an extra reference I am giving.

THE CHAIRMAN: The other reference is what?

MR. SMITH: The first reference which I just gave you, my lord, was to 272 I.C.C., page 695 at page 705. That was Ex Parte 168. There were two decisions in Ex Parte 168.

THE CHAIRMAN: I see it now. 272 is at what page?

MR. SMITH: That is it; that is at page 705; and again the matter was discussed on the reconsideration of Ex Parte 168 at 276, pages 24, 28 and 31; and if I may, I think, perhaps, I have answered --

COMMISSIONER INNIS: Yes, I am sorry. You said a good deal about long haul. I suppose that is covered pretty extensively in the cases you cited, as to the effects of horizontal increases?

MR. SMITH: Yes, I think it is.

COMMISSIONER INNIS: I wondered if you thought there was any difference in the situation in which there are a great many railways in the United States, and that of Canada, where there are only two main line railways?

MR. SMITH: I do not think it makes any difference; but there is the principle of market relations.

COMMISSIONER INNIS: Don't you think that it would be much more rigid for Canada than for the United States?

MR. SMITH: I do not get the connection.

COMMISSIONER INNIS: Do you not think it would be much more difficult to arrange for competition

between regions to secure access to the same market, from districts which were wide apart and quite different?

MR. SMITH: I think the problem is there and is one which has to be solved or relieved.

COMMISSIONER INNIS: You have not given it any consideration?

MR. SMITH: No, I have not given it a great deal of thought, but I think it is more difficult in Canada.

THE CHAIRMAN: You want to call Mr. Egan?

MR. SMITH: Yes.

THE CHAIRMAN: Very well, we shall take a few minutes recess.

(Page 14725 follows)

MR. HAROLD J. EGAN - CALLED

EXAMINED BY MR. SMITH:-

Q. Mr. Egan, your name is Harold J. Egan?

A. That is correct.

Q. You are a chartered accountant practising in the Province of Nova Scotia?

A. Yes.

Q. A member of the Institute of Chartered Accountants of Nova Scotia?

A. Yes.

Q. You are also a Bachelor of Arts and a Bachelor of Commerce from Dalhousie University?

A. Yes.

Q. And have you ever been a lecturer at a University?

A. Yes, I lectured at Dalhousie University from 1933 to 1940.

Q. In what subjects?

A. Auditing, accounting, income tax and other related financial subjects.

Q. Have you held office in the Nova Scotia Institute?

A. Yes, I was on the Council for about ten years and was President in 1939.

Q. Have you had any experience in connection with the work of the Nova Scotia Government?

A. Yes, I was in charge of Division 2 of the Department of the Attorney General from 1936 to 1941, which included among other things being in charge of the Department of Municipal Affairs, Securities Department, administration of succession duties, and

other matters.

Q. Have you had any experience with public utility matters?

A. Yes, both before entering the Government service, while in the Government service, and afterwards, various matters in connection with public utilities.

Q. Did you give evidence in the 20 Percent. Case?

A. Yes.

Q. On what matters?

A. In connection with the apportionment of dividends, fixed charges, and methods of illustrating how to apportion and allocate those items.

Q. And have you been accounting adviser to the Maritime Commission on behalf of the three Maritime Provinces during the 20 % hearing?

A. That is correct.

Q. And also accounting adviser to the Province of Nova Scotia in the present investigation by this Commission?

A. Yes.

Q. Now, Mr. Egan, what is your opinion concerning the advisability of uniform accounting being prescribed for railways in Canada?

A. I am in agreement with the submission made by the Province of Nova Scotia which is contained at page 43 of the Brief which reads:-

> "With respect to accounting methods of railways in Canada, it is submitted that in order to appraise the operating results of the railways in any year or to compare the results over a period of

years, it is imperative that annual statements should be compiled on a uniform basis. It is urged that to bring this about the Board of Transport Commissioners prescribe a uniform standard classification of accounts which the railways should be required to follow in preparing their records, and financial statements."

Q. What is your opinion of the present practice of permitting railway companies to determine their own policies with respect to accounting for their revenues and expenses?

A. I am in agreement with the submission of the Province of Nova Scotia which is likewise contained on page 43, which reads as follows"-

"The present system of permitting each company to segregate its expenditures between capital and revenue accounts leaves to its executives a wide margin of discretion based on financial policy. It is submitted that the segregation of expenditures between capital and revenue accounts in any regulated company should be carried out under rules prescribed by the regulatory body".

Q. Now what matters so you consider should be given special attention in the preparation of a uniform standard clsssification of accounts?

A. While not suggesting that the items set out in the provincial brief are all-inclusive, I am in agreement with the items enumerated on page 43 which should receive special attention. They are:-

"1. Definite and detailed rules should be laid down as to what constitutes proper charges to the operating accounts under the classification of maintenance.

2. The method of computing depreciation should be determined and the rates prescribed for all classes of assets.

3. Rules for the segregation of accounts should be laid down, clearly setting out what constitutes rail as opposed to non-rail enterprises.

4. Rules for the allocation and apportionment of charges common to both rail and non-rail enterprises should be prescribed by the Board."

Q. Now, Mr. Egan, were you present here yesterday when Mr. Morrison read the supplementary submission of the Province of Alberta?

A. Yes, I was present.

Q. And, if so, do you agree with the general tenor of the views which were expressed in that submiss

A. With respect to uniform accounting and depreciation and the segregation of accounts, rail and non-rail, yes. Also I agree with the quotations which Mr. Morrison has adopted from the Brief of the Canadian National Railways with respect to uniform accounting at pages 80 and 81.

Q. Pages 80 and 81?

A. Of the Canadian National Railways' Brief, those quotations being, from page 80 of the Canadian National submission:"that there should be a uniform

system of accounts for Canadian railways and that such system should be prescribed in accounting classifications to be issued by the Board of Transport Commissioners under statutory authority"; and, at page 81: "a management subject to accountability should not itself decide the accounting rules by which the results of its management are to be judged".

THE CHAIRMAN: Any questions?

CROSS EXAMINED BY MR. RAPOPORT:-

Q. Mr. Egan, in the Brief of the Province of Nova Scotia on page 1 about 8 or 9 lines from the bottom of the page, this sentence appears:-

> "The competition between highway transportation and railway transportation has greatly increased and will inevitably continue to increase."

What is the basis of that statement, Mr. Egan?

A. Well, I cannot speak for the Province of Nova Scotia with respect to motor/truck transportation or transport by motor carrier, but my own personal interpretation, my own personal opinion in connection with the matter is that the record of the past 20 years would suggest that we can look forward to an increase in the number of truck transports on the highways of Nova Scotia and Canada; and if that increase continues, I would presume as a matter of inference that there will be increased competition.

MR. RAPOPORT: Mr. Chairman, there is one other question, and I have only one other question, which perhaps I should not put to Mr. Egan in view of

the fact that he is not, I understand, speaking officially for the province.

THE CHAIRMAN: What is the question?

MR. RAPOPORT: I will put the question anyway. It arises from the reports of the proceedings in the Senate on Bill B, which you may recall was introduced to the Senate some years ago.

THE CHAIRMAN: You mean the Canadian Senate?

MR. RAPOPORT: That is right.

THE CHAIRMAN: What was the purpose of the Bill?

MR. RAPOPORT: The purpose of the Bill, you may recall, Mr. Chairman, was to regulate transport by highway, that is, transportation inter-provincially or, as they called it, "transport in inter-provincial or foreign trade." I find Mr. Chairman, in the minutes of the evidence of this case a statement by the then Minister of Highways for Nova Scotia, and I would like to ask whether there has been any change in the policy of the province since that time.

MR. SMITH: Mr. Chairman, I don't think that Mr. Egan has been put on the stand to answer questions of that kind.

THE CHAIRMAN: Perhaps you can answer. The question is addressed to the policy of the government of Nova Scotia.

MR. SMITH: Yes, insofar as the policy of the Government is concerned, I have no instructions on that matter .

MR. COVERT: I was going to suggest that Mr. Rapoport might read into the record the statement

made by the Minister of Highways at that time.

THE CHAIRMAN: What is the statement?

MR. RAPOPORT: The statement appears in the last sentence on page 160 of the minutes of evidence, as follows:-

> "I don't think you can force the provinces in a thing of this kind. I know nothing about the legal side of the question. If you try, you will have a little war on your hands."

Then on page 161, five lines from the bottom, the Minister of Highways makes this statement:-

> "But I don't think you are going about it in the right way by attempting to force something (and I am reluctant to use extravagant language) by attempting to force something down our throats without our permission. That is our attitude."

My question, Mr. Chairman, is whether there has been any change in the attitude of the Province of Nova Scotia since those statements were made?

THE CHAIRMAN: Well, there is nobody here can answer your question now.

MR. COVERT: I understand that none of the provincial counsel have any questions to ask.

MR. EVANS: I think I will be very short.

CROSS EXAMINED BY MR. EVANS:-

Q. Mr. Egan, the first paragraph on page 43 which you read, says this:-

> "...it is submitted that in order to appraise the operating results of the railways

in any year or to compare the results over a period of years, it is imperative that annual statements should be compiled on a uniform basis."

Now, just so that we have you clearly, when you speak of operating results you mean other than merely operating statistics?

A. That is correct.

Q. You mean something down to the operating income or net income, or how far down do you want to go?

A. Wherever you want to stop, Mr. Evans, in your analysis of the operating results.

Q. I want to know where you want to stop.

A. I want to be in a position to know, from my point of view, if I am called upon to analyse statements of the Canadian Pacific Railway and Canadian National Railways, that when I see in the Canadian National accounts the maitenance of something or other, that the same type of principle has been used in allocating to that account the expenditures that were made by each of the railways.

Q. What you mean to say is that you are more concerned with the accounting for expense items than you are anything below the line of net operating income?

A. Well, of course, if you have uniformity in accounting for revenue and uniformity in accounting for expenses, then you are in a position to know that the end results have been arrived at on the same principle.

Q. Yes, now then, as regards accounting for revenue, I suppose that the principal differences which

you have in your mind are the treatment, for instance, of revenue from statistics?

A. That would be one.

Q. And have you anything else particularly in your mind?

A. Not particularly or specifically. What I have in mind is simply this. I am only dealing here with the general principle, that if you lack uniformity you are in the difficult position of having to reconcile or bring uniformity to each of the individual items entering into that statement before you can compare it.

Q. I don't want to take you into any detail because I am not an accountant, and I am incapable of dealing with it on a detailed basis, but I do want to get your view, as to the principal differences which you now see in the revenue accounting which you think ought to be made uniform, and then perhaps to know your suggestion as to which of the several alternatives you would chose, and then to branch into the question of expenses.

A. Well, in fact, Mr. Evans, as far as going into that question of my opinion as to what the classification should be for the uniform system, I have not made a detailed study, nor have I received, I mean, the proposals of the Canadian National with respect to classification of accounts. It is purely the principle which has been advocated here that I am in agreement with.

Q. What I am trying to do is not to get the detail from you but to get how far you would apply the principle, because I think you will agree with me that in accounting you can apply the principle completely

and in the end get a figure right down to the last dollar of net income which was on an exactly comparable basis, if you were applying such a system to different corporations. You could do it?

A. Yes, it would be possible to do it perhaps, Mr. Evans, but there are numerous exceptions between any two corporations of various things that one corporation has that the other has not.

Q. That is really what I want to get at.

A. When you get down to the question of uniformity, the first thing, the first principle, is that your revenue should be dealt with in a uniform manner, and these exceptions which I have mentioned will stand out; I mean, in dealing with the accounts, so that an independent accountant, making an analysis of the statement of exhibits presented for such purpose as rate cases or, some other purpose, that they can tell, without exhaustive examination of witnesses, cross examination and so on, just what is the content of those statements.

Q. Quite , I think I understand that part. Now going to the question of uniformity of revenue accounting, I gathered from you that one of the items that you had in mind was that the accounting, we will say, for telegraph revenues should be uniform .

A. Should be dealt with in a certain manner prescribed by the Board.

Q. Is it your view that telegraph revenue should be treated as rail revenue or should be treated as non-rail revenue?

A. That is not the first principle that I am suggesting as far as revenue is concerned and really

has nothing to do with it.

Q. Have you no views on that, because if you have not I will pass on.

A. No, I just want to make one point clear first. The first thing I want for uniformity, when I mentioned telegraph revenue, was that the telegraph revenue as shown in your statement shall be the same as the telegraph revenue in some other statement, not necessarily that it be rail or non-rail. In other words you may have one method of accounting for your revenues which are divided between Canadian revenue and foreign revenue. Another company may divide it some other way. Some other company may not divide it at all. The first thing is to get uniform accounting on such segregations that are deemed necessary of the revenue, so that they can be compared. That is number one.

Number two, I think it is a matter for the Board to decide as to what revenues shall be regarded as rail and what will be regarded as non-rail, but that is not in my opinion anything to do with the principle of uniform accounting. This is just a pure question of accounting being recommended here.

(Page 14737 follows)

Q. Well, you see I am just trying to find out what your views are. If you have no views on this question --

A. If you ask me the question that it is not apart from uniform accounting, my view is that as far as telegraph revenue is concerned, so far as certain parts of it are concerned, it lends itself to the suggestion that it is rail revenue; so far as other aspects of it are concerned it suggests that it is not.

Q. Would you state what parts suggest that it is rail?

A. Well yes, using the C.P.R. as an illustration, as I understand it the facilities are used by the railroad as well as by the telegraph company for transmission of messages. However, the telegraph company also carries on a cable business, foreign telegraph business, and so on, in which the facilities are not used jointly by the railway and the telegraph company.

Q. As a practical accountant, is not this true, that since telegraph rates are in themselves regulated by the Board of Transport Commissioners -- you knew that?

A. Yes.

Q. Since that is so that it would make much less unscrambling in both telegraph rate cases and in freight rate cases if you had revenues and expenses of the telegraph department separated from the purely rail department. Would you not agree with that?

A. It probably would be much easier from the point of view of appraising absolute railway results.

Q. So, would not this be the result? If you brought in the commercial telegraph revenues and expenses into the rail account, wouldn't you really have to segregate

them again to get the proper level of earnings of the rail services for freight rate cases?

A. It would depend, Mr. Evans, as to how you carried through your segregation as far as your uniform accounting is concerned. In other words, if they were confused --

Q. I am assuming they are segregated; I am not assuming any confusion.

MR. SMITH: Perhaps you could let him answer the question, Mr. Evans.

A. If there is any confusion, then you would be in difficulty but if they are absolutely segregated as far as operation is concerned, it would be very simple, but as I understand the situation there are certain expenses common to the operation of your telegraph system in Canada as well as the operation of the railway. Now, the method of segregating those, I think, is a matter of direction by the Board and they come under the classification of the [illegible] direction for uniform accounting.

Q. But at least you would agree with this, that the probability of being able to segregate telegraph revenues and expenses would be a much simpler matter than trying to segregate some common costs, say, between passenger and freight services on the railway?

A. I think it would be much easier.

Q. And would it not be the ideal that you would seek as an accountant that if you could make a segregation of revenues and expenses for telegraph operations, that you would use that as a measure of telegraph rates and the expenses attributable to rail service as a measure of rail rates?

A. I would think that is correct if a proper segregation can be made of the expenses but one cannot, if I may finish. The service that would be paid for by

the railway to the telegraph company would likewise, of course, then be the subject matter of regulation by the Board, in other words, the appraisement of what should go to the railroad as a result of the use of their service.

Q. You would want to see that the railway was not overcharged for the use of the telegraph. If it were on a cost basis, there would be no question of setting a rate?

A. Perhaps it should not be on a cost basis if it is going to be a separate utility segregated in that way. Perhaps the rail could pay a rate to the telegraph company.

Q. The ideal that an accountant would strive for in a rate case involving telegraphs, would be to know what the revenues and expenses of the telegraph were?

A. That is right.

Q. And similarly in a freight rate case you would be interested in segregating the revenues and expenses of the rail service?

A. That is correct.

Q. I am not going to go right down through the various things. All I want to establish with you is a matter of principle, that where you find rates of services regulated separately, it merely adds confusion, as I suggest, to take in these other enterprises if you can properly segregate them?

A. It would be solely on the assumption that the segregation is correct, absolute and subject to review so that the segregation itself would receive the approval of the regulatory body as being sound and in accordance with sound financial policy.

Q. I would not quarrel with you at all on that, Mr. Egan. You have to make your segregation sound and you have to be fair about it but I am talking about the principle?

A. The principle I agree with.

Q. Now, without pursuing that in all its detail, I would like to go back to this same question of the comparison of operating results. Now, then, I suppose that there are two bases upon which it might be desirable to compare what you call "operating results" and if I may put those separately and then go back to it so that I won't confuse you -- the first basis would be that you might want to make a comparison between operating statistics to determine the question of efficiency?

A. Yes.

Q. And the second one would be the net operationg results for the purposes of rate making?

A. If net operating results are required for purposes of rate making, yes.

Q. I am just wondering whether your submission did express that second category?

A. Yes, it expressed that certainly because, in my opinion, if we had uniform statistics of the railways in Canada, we would not have wasted quite so much time trying to gather information for the last freight rate case.

Q. You and I might have quite an argument about that. Talking of operating statistics separately, I think we are in agreement that if you want to compare operating efficiency, it would be desirable to have operating statistics on a comparable basis?

A. I think that is correct.

Q. Now, when we come down to operating results, I gather that you also thought that it was desirable to have the rate making aspect, that is to say, the net earnings from rail operations reached on a comparable basis for rate making purposes?

A. That is one item; but likewise for purposes of comparing one year with another for the purpose of testing the various expenditures by one railroad with the other as well as the trend in the expenditures in certain lines made by the various companies over a period of years, you have to have the actual expenditures on a comparable basis to see whether your conclusion to be drawn from the trends shown is accurate.

Q. Talking of trends, there are really two aspects of trends, which I think are involved. One is, even if you establish uniform accounting today, you probably would have difficulty in your transition from the pre-uniform accounting stage to the uniform stage and so what you are really speaking of in terms of trends are trends as from the time you get uniform accounting?

A. That is correct, plus the fact that once you have got it established on a uniform basis, certain work can be done, I mean in retrospect, to adjust the figures previously kept which, of course, will not be as accurate as figures compiled in the future.

Q. Now, the other aspect of trends -- and I am only doing this to clear up the discussion between us -- the other aspect of trends is that you could have a trend set by an individual railroad without uniform accounting as compared with another that has uniform accounting?

A. That is correct.

Q. So what you are speaking of as "trends", is that you want to compare the trends of the two?

A. And trends in various items such as one particular item, for example, the trend in maintenance expenditures over a period of years. You might be able to compare the total results of one railroad with another by comparing your trend-line on the one company which might not be uniform with another but the accuracy of an individual item of expenditure might not necessarily show any concrete reliable results unless they are both on a uniform basis.

Q. When we talk about the comparison of operating results, I think one of your answers rather suggested this. I do not want to misinterpret you. You rather had a ltttle reservation when I put to you this comparison of operating results. Lest I might be suggesting to you that the question of which of the two railways should be a yardstick, had you that in your reservation back there in the question?

A. I was not discussing anything except the pure theory of uniform accounting.

Q. I thought you had inferred it and I am going to put it to you directly. Would not the question as to whether you were going to use the railways jointly as yardsticks rather than one as against the other have a good deal to do with the desirability or otherwise of putting them on a uniform basis that would enable you to compare operating results?

A. When you say "yardstick" I presume you have reference to the present case before the Board where the Canadian Pacific was used as the yardstick?

Q. Right.

A. And your suggestion is that one of the aims of uniform accounting would be to use the two combined

so that they could be combined as a yardstick?

Q. Yes.

A. I do not see that that is one of the aims of uniform accounting. It will, however, permit of comparison and show whether or not one railroad is spending more money than the other on identically the same type of expenditure and the relationship between the two appears more clearly than it can be done today because we do not know if we are comparing like with like . but I do not think the question of uniform accounting is advanced anywhere with the ideal of combining the two as yardsticks.

Q. I just wanted to get your view. You spoke very rapidly and I was trying to get one part of your answer down. I rather gathered that you said: "--to see whether a company was spending the same amount on maintenance in the same period as another."

A. And other expenditures as well.

Q. I am not making a particular point of this, but I just want to suggest this to you, that if you have a publicly owned corporation as against a privately owned one, you have definite differences in policy in regard to maintenance?

A. I should think that is correct.

Q. And I think in your examinations you would find that privately owned utilities tend to make as far as possible their maintenance expenditures fluctuate with their pocket book?

A. I think that is quite true.

Q. Then, would it not be fair to say that you might find that that influence -- and I am not making any invidious suggestion -- would not you find that that influence was not as strong in a publicly owned corporation?

A. I might go so far as to say in certain conditions it might be the reverse.

Q. So uniform accounting would not enable a comparison to be made in different economic discretions as to the propriety of maintenance expenses?

A. Not the propriety, but it would merely point out the differences which would have to be explained by way of policy.

Q. But I think you see my point there. You must agree that uniform accounting is not an automatic cure-all?

A. Oh no and let me make my point clear that I am not suggesting that any prescribed form of accounts will result in a net operating profit from rail that should be regarded as a rate making system or anything like that either; it is purely a question of getting the information in financial statements and in the exhibits in such a manner that independent parties who are interested will know what is in those accounts and that we will eliminate, so far as it can be eliminated, a certain amount of discussion as to what goes into them and let the regulatory body decide what goes in and then we will know what the contents of the accounts are.

Q. I suppose you will agree with me that in many particular details or classifications the question of interpretation arises?

A. That is quite true, but over a period of time they gradually clarify and are lessened to the point where they are workable in the first instance and become more workable as they are tried.

Q. Now then, what you are rather suggesting is that they should not be so detailed as to try and anticipate the possibilities of inetepretations of various accounts

but it should be a good workable classification of accounts?

A. I quite agree. No accounting system should be so detailed or so codified that it becomes a burden instead of a help to others, sets out an outline of the corporation as well as providing concrete information to the regulatory body.

Q. And I think you would agree with this, that an accounting classification not only should be as simple as possible consistent with the aims and objectives to be obtained, but it should be an outcome of the conference between the regulatory authority and the railways themselves?

A. I would agree with that and I would add to it that it should be the subject of continuing conferences.

Q. And I think I might agree with you on that. Now then, when you come to your individual points, when you say:

> "Definite and detailed rules to be laid down as to what constitutes proper charges to the operating accounts and to the classification of maintenance."

I gather that you did not wish to indicate anything different from what you have just told me as an objective of the classification generally.

A. Except perhaps with this explanation, Mr. Evans, that I in my position do not mind what you charge to maintenance, provided I know in your maintenance accounts and they should be sufficiently detailed in the uniform classification so that the Board's ideas of what constitutes maintenance will be carried out by the company or companies and what they regard as proper items to be capitalized or divided between capital and maintenance should be so divided. In other words, in your railway

company you have numerous operations in connection with your equipment and fixed assets generally which require to be maintained, renewed, replaced and in many cases this is a question of a division between a capital expenditure and a maintenance expenditure on the one contract. Well, the rule for division and the general rule governing what should be a charge to maintenance, I suggest, should be brought down by the regulatory authority.

Q. Have you any improvement to suggest in the Interstate Commerce Commission rules in that respect?

A. I have not prepared any detailed classification.

Q. But I think you will agree, perhaps, with some evidence that was given in the 20 per cent Case to the effect that really there were very very few of the marginal cases where you have any question of interpretation as to what constitutes capital and maintenance. It would be on marginal cases that this difficulty would arise?

A. Well, in the first place, I have heard it said on the witness stand that the Canadian Pacific, for example, follow the Interstate Commerce Commission classification. The question of argument as to what constitutes capital and what constitutes maintenance was the subject of many arguments in both those cases.

Q. It really gets down to what constitutes a unit?

A. That is right, and the general definition by the Board in a clear cut manner of all these various items which can be resolved is in general terms and it is added to by interpretation and rulings and will gradually clarify what should go into the maintenance account and what should not.

Q. I do not want to spend too much time with you on that but I want to put this to you.. If we are going

to go on the unit basis for the purpose of determining whether you charge an asset or part of an asset to depreciation reserve, you would have to have that spelled out so that you would know what you mean when you use the word " unit", whether you meant a section of a unit or a roof off a building or what you meant by a unit?

A. That is correct.

Q. And depending on what definition you gave to "unit" you would have to make your allocation of depreciation charges in the light of what you were going to expect to charge to the depreciation reserve?

A. I would agree with that statement, yes.

Q. I think that is all, Mr. Egan Thank you.

COMMISSIONER ANGUS: Would comparability of accounting go so far as asking for comparability of capital structures?

A. No, the situation, there -- you see, in the first place the uniform accounting will give you uniform statements as to what is uniform.

(Page 14750 follows)

Then what is not uniform between two or more or a dozen corporations will stand out so that it can be related instead of being confused with the part that cannot be made uniform. I am not suggesting, for example, that in order to have uniform accounting we should make businesses uniform. For instance, capital structures in one company and the other are bound to be different, but the fixed charges and interest paid on that capital structure will be paid in either the same manner by way of interest or dividends, or there may be no fixed charges in the other company, but the fact there are none will immediately appear on what is made up from the statement prepared on a uniform classification. One will show it. The other will not.

CROSS-EXAMINATION BY MR. O'DONNELL:

Q. Mr. Egan, when you are speaking of uniformity of accounting principles and classification I take it it is with particular reference to public utility companies such as railways?

A. That is what I am speaking about here, but the value of uniform accounting is not confined to railways or public utilities.

Q. But you have particular reference to it for the purpose of comparing industries in the same sphere of activity?

A That is correct.

Q. Now, in the 21 per cent case Mr. Glassco, to whom reference was made yesterday, said, speaking of depreciation accounting, that the straight line method is the simplest and easiest to understand?

A. I would agree with that.

Q. Would you care to make any comment as to the application of that method? How does it compare with the user method, for instance?

A. I presume by your question you are referring to the question of accounting or the question of the nature of the depreciation charge itself?

Q. Well, in the application of depreciation accounting on the straight line method is it easier to apply that method than the user method?

A. It is easier to apply and it is easier to control for a regulatory body.

Q. What do you mean by that?

A. As far as following the continuity, rechecking for the purpose of seeing whether or not the rates which have been set are reasonable. In other words, it lends itself to better policing, to use the word, of the charges being made by the utility to its revenues by way of depreciation.

Q. You say it is easier to check the rates?

A. Yes.

Q. What is the difficulty involved in the checking of the rates as between the user rate and the straight line rate?

A. To be perfectly frank with you I have never had any experience in checking user rates, but the variation in the annual charge being predicated on use instead of on time creates various total charges for the classes of assets in each year varying under certain circumstances with traffic, and the net result is that appraisement after a period of years as to whether your rates are too high or too low is much more difficult than on the straight line method. That is from the point of view of rechecking by a regulatory authority to see whether or not the

allowance for depreciation is too high or too low. Likewise it is easier, in my opinion, for the company to revise its rates under the straight line method than under the user method. Of course it depends from what viewpoint you are looking at the question of the selection of your system. Looking at it from the point of view of the fiscal policy of the company, looking at it from their point of view, the user rate may be far superior to the straight line. From the point of view of a regulatory authority, from the point of view of trying to arrive at something of a normal charge annually over a period of years for the equipment used and useful in the operation, the straight line method lends itself to much simpler calculation.

MR. O'DONNELL: Thank you.

EXAMINATION BY MR. COVERT:

Q. I wondered, Mr. Egan, if we might have the advantage of your personal views on some of the items as to whether they should be regarded as rail or non-rail. I think the only one that Mr. Evans dealt with was telegraphs. Take the Canadian Pacific Express Company. I understand that involves two things. First there is the actual express, and then there is the money order or financial end of the business. Have you any ideas as to how those should be divided?

A. As far as the Canadian Pacific Express Company is concerned you have to think of those matters in the light of the individual circumstances, I would suggest. Just looking at some notes I had in connection with the Canadian Pacific Express Company, from 1947 the bulk of the revenues, practically all of them, went directly to

the Canadian Pacific Railway because it is really an ancillary operation of the railway itself. The company, however, apparently is a subsidiary and it proceeded to pay a dividend on its earnings to the Canadian Pacific Railway which was classified as Other Income, and retained over and above that amount paid as a dividend a certain part of its earnings in the service of the Canadian Pacific Express Company. In addition profits contained in the Express Company were presumably derived from their financial operations, from the sale of money orders, and so on.

You have to look at it, in my opinion, from the point of view of the whole operation. Clearly about 97 per cent of the operation is rail, and the only part of the operation that is non-rail, or that could be classified non-rail, is this financial service they give. But there are so many services given by any major company that are just not directly in connection with the main business of the corporation that I would think it should all be classified as rail. In other words, take the railway company itself. It provides certain services and does certain things that are just not running freight cars and carrying passenger trains up and down tracks. You do not take all these little ancillary services out and call them non-rail enterprises.

Q. Then on the same basis you would treat inland steamships as rail?

A. Yes.

Q. And what about motor bus and truck companies that are owned by railways?

A. I would hesitate to give an absolute opinion on that in general terms. It depends on the use, in my

opinion, what the motor trucks and buses are used for and the circumstances and where they are used. It may simply be an operation where there are no railroads at all. It may be a delivery service or pick-up service to service the railroad, or it may be a competitive service with the railroad.

Q. If it were ancillary to the railway then you would regard it as rail?

A. A rail operation.

Q. That would generally be the test that you would apply?

A. It is one of the tests, but the difficulty that I have with giving any general statement or any principles under which it can be so classified is based on the general premise that the company itself has decided to invest or engage in some business that may or may not be directly related with the rail operation. The purpose for embarking on this enterprise may be to stimulate rail income, to provide avenues from which they will draw freight, or it may be the investment of surplus funds.

The question of why the investment was originally made and its purpose has some bearing on a decision, but the original purpose can change through the effluction of time and the enlargement of the enterprise that has been started, and it may be what may be a non-rail enterprise in 1949 might be regarded as rail in 1952.

I think a certain amount of latitude has to be given to the regulatory authority first to have and obtain all information concerning the ancillary enterprises where a regulated body has embarked on unregulated enterprises, and make its own decision as to what is rail and non-rail, having regard to the circumstances at the time.

Q. Perhaps in view of that statement I should not ask you specifically as to such matters as hotels and stockyards, grain elevators,and so on.

A. Take, for example, stockyards. I noticed in the brief of the Canadian National Railways an explanation of one of their subsidiary companies which was a stockyard, and the reason for them holding it. I think I can find it quickly. It is the Montreal Stockyards Company and is referred to at page 142 of the brief of the Canadian National Railways. The footnote at the bottom of that page has the heading, "Value to Canadian National Railways," and reads:

> "The primary object of this company is the protection of freight traffic for the C.N.R. It is of valuable assistance in drawing the major portion of livestock business in the Montreal area to the railway."

Now, I do not say that is rail business from the point of view of being a part of the railway, but it certainly is, if that explanation is to be accepted, something that is deemed essential by the Canadian National Railways for them to own and have there to promote and obtain freight revenue. In other words, it falls pretty nearly in the same classification as a freight solicitor.

Q. Under circumstances like that you would say any income should be treated as rail income, and that their losses --

A. Exactly, because that stockyard may not be able to operate at a profit, but if on inquiry it is found that the freight produced by having that stockyard there justifies that expense, then I feel it is a rail expense, the loss on the operation of the stockyard.

Q. The same thing exactly might apply in the case

of hotels?

A. It is quite conceivable it could apply in the case of hotels.

Q. And grain elevators?

A. Grain elevators are in the same classification.

Q. Then you think, Mr. Egan, there should be several tests, whether or not they are ancillary to rail operations, the purpose may be important, and --

A. And their present use to the railway in promoting essential rail revenues which would include passenger as well as freight revenues.

Q. How would you consider Consolidated Smelters?

A. As far as Consolidated Smelters is concerned, I have not the particular reference here, but in the early reports of the Canadian Pacific Railway in their annual statements references are made there to the investment in Consolidated Smelters and the traffic it was going to produce to the railway. Therefore it would appear from the early annual reports of the railway that the original idea of going into Consolidated Smelters was to promote traffic for the C.P.R. Consolidated Smelters has developed into a corporation by itself that is far beyond anything first intended, and in my opinion it should stand on its own feet, and it is certainly not ancillary to the Canadian Pacific Railway. On that test it would fail as being anything related to rail revenue.

Q. It would be non-rail?

A. That is correct.

Q. Now, I think there are a few more questions. If you take income in would you also take in the investment?

THE CHAIRMAN: Pardon?

MR. COVERT: Q. If you decide that the income from one of these activities should be taken in as rail income, would you also take in the investment?

THE CHAIRMAN: Are you talking of Consolidated Smelters in particular?

MR. COVERT: No, not in particular; I was taking any item.

THE CHAIRMAN: Hotels?

MR. COVERT: Yes.

THE CHAIRMAN: If they are to be considered as rail.

MR. COVERT: Q. From the point of view of taking in income or taking losses, would you take in the investment as part of the investment in rail property?

A. For what purpose?

Q. Perhaps for a rate base?

A. No.

THE CHAIRMAN: Q. You would not?

A. Not for the purpose of a rate base.

Q. Even if you took the revenue into consideration?

A. No, I would regard that as other rail income. In other words, I make a distinction between other income rail and other income completely disassociated from rail. In other words there is a difference there. You could not call the rentals or fees of a stockyard rail income. It is ancillary rail income or other income rail as opposed to other income completely disassociated from the rail enterprise.

Q. Would those remarks apply to hotels?

A. Yes, if the hotels could be construed to be there for the purpose of developing passenger revenue and other features of the rail I would regard that as other income rail to be taken into account in fixing rates.

Q. But the money the hotels cost to build you would not consider as a part of the railway investment?

A. No.

Q. Do you think you can justify that?

A. I think I could, yes, because it is not something that is used or useful to the people who are actually using the system as far as rates are concerned. The principal revenue is in freight rates, and I cannot relate hotels to freight rates, and I cannot relate the return on hotels on a basis of freight rates.

COMMISSIONER ANGUS: Q. The railway would be entitled to a return on its investment in the hotel?

A. If the ancillary income comes from hotels they are getting it.

THE CHAIRMAN: Q. They are what?

A. They are getting their ancillary income rail from their hotels if the income is produced by them. In other words, they would have to stand on their own feet in that respect and bear their fair share of expense. There are really three divisions. There are certain of the enterprises which are clearly rail, in my opinion, such as terminal facilities. They may be in a subsidiary company, but they are clearly rail enterprises. Your inland steamships, in my opinion, are clearly rail. Then you have got a sort of ancillary situation of hotels, stockyards, grain elevators, and so on, where there is income derived from that investment that has directly to do with rail which should be taken into consideration in certain circumstances as far as a fair return to the railway, if it is on requirement. If it is a question of a rate base then it may be taken into consideration in some manner or another but not in the same classification as rail property.

Q. In some manner or another -- that is very indefinite.

A. In some manner or other -- when I say that I am differentiating between roadbed, rolling stock, equipment and so on. There may be an allowance for the ancillary enterprise in determining the rate of return.

MR. COVERT: Q. The last question I have to ask is this. Suppose the losses on these other things were so great that they wiped out the rail income?

A. Well, the question you are really asking me is whether or not the regulatory authority should take into consideration losses on ancillary enterprises in fixing freight rates. That is really what it amounts to.

Q. Yes.

A. The question I posed to you in the first instance, or the answer, was that this investment might have been made, such as the stockyards as illustrated by the Canadian National, for the purpose of attracting freight revenue. If the losses are such as to wipe out the freight revenue it is certainly not a very prudent investment to continue or to have. In other words, if that investment has been made to produce income and all it does is produce losses greater than the profit that is made on the other enterprise, then I can hardly see that it is a prudent investment or a loss that should be taken into consideration in allowing a rate of return to the utility.

THE CHAIRMAN: Q. You would not consider it in fixing freight rates, then?

A. Not if the losses on the ancillary enterprises were so great as to wipe out the profits from the rail enterprise.

Q. But if the income from them swelled the revenues of the railway you would consider it on the question of lessening rates?

A. And I would consider them too if the losses on them were justifiable in relation to the revenue produced.

Q. Related directly to railway activities?

A. Yes. On the question posed to me, if they were so great as to wipe out the total rail income then they have lost their significance as producing rail revenue.

THE CHAIRMAN: We will resume at a quarter to three.

(At 1.00 p.m. the Commission adjourned to resume at 2.45 p.m.)

(Page 14763 follows)

AFTERNOON SESSION

THE CHAIRMAN: Do I understand that we are to hear from you, Mr. Brazier?

MR. BRAZIER: Yes, my lord, but I understand that Mr. Frawley wishes to make a statement.

MR. FRAWLEY: Mr. Chairman, the Commission may not remember, but at the Calgary sittings there was a brief presented by Mr. Purdy of the Federated Co-Operative Services Limited, in connection with which Mr. Evans raised a question as to the accuracy of a table.

I now have a memorandum which agrees with the fault found by Mr. Evans, and as Mr. Evans is content that this short memorandum explains the matter, I would ask that it be read into the record at this time.

THE CHAIRMAN: What was the man's name?

MR. FRAWLEY: A Mr. Purdy presented the brief and Mr. Harries was asked to undergo cross-examination thereon.

THE CHAIRMAN: Was this at Calgary or at Edmonton?

MR. FRAWLEY: It was at the Calgary sittings, sir.

"MEMORANDUM RE THE SUBMISSION TO THE ROYAL COMMISSION ON TRANSPORTATION BY FEDERATED CO-OPERATIVE SERVICES LIMITED - AT CALGARY - ON 14TH JUNE 1949 - SEE TRANSCRIPT P. 1767 AND FOLLOWING PAGES

During the cross-examination in connection with this Brief which was presented by Mr. Purdy, the question of the accuracy of Table 3 (p. 1776) was raised by counsel for the Canadian Pacific Railway. This Table purported to show that from 1914 to 1935 the livestock rates in Western Canada were actually approaching parity with those in the

East, and that from 1935 to 1949 this trend to parity had disappeared. Upon reconsidering this matter the following statements may be made. (Page 1790a and following pages, and especially page 1793.)

1. All rates in column 1947 should be the same as the rates given in the 1935 column. The rates for 1949 are simply the 1935 rates altered by the 21% increase, which means that the rate from Claresholm to Calgary is $40, the rate from Innerkip to Toronto is $42, the rate from MacLeod to Calgary is $46, the rate from Clifford to Toronto is $46, the rate from Pincher to Calgary is $48, the rate from Paisley to Toronto is $48, the rate from Grassy Lake to Calgary is $54, the rate from Chatham to Toronto is $54.

2. The alterations made in this Table indicate that the statement made in the Brief commencing the second last line on page 5 and continuing on the top of page 6 "Yes, the difference has narrowed since 1914, but we may well ask why it has lately shown a tendency to once again become wider" is incorrect as far as the non-competitive rates on livestock in Eastern and Western Canada are concerned.

3. As a result of the change in Table 3 it must not be concluded that there are no differences in the intra-provincial livestock rates in Eastern and Western Canada. Table 2 stands as presented and indicates that especially on longer hauls there is a substantial difference in the rates which producers in different areas of Canada pay.

4. Mr. Evans at page 1793 of the Transcript said as follows:

> 'I have checked and I find that there are no lower rates than those in Eastern Canada even to meet truck competition; and I think the witness suggested that there were.'

I did not suggest that there were at that time lower rates in Eastern Canada because of truck competition and pointed out that the railways withdrew the truck competitive rates in Eastern Canada on April 15th of this year, 1949. (Reference page 1790b).

In summary, Table 3 as presented at p. 1776 is wrong and the contention that the rates in Eastern and Western Canada were not approaching parity is incorrect. There are no other changes in opinion or fact required in this Brief."

THE CHAIRMAN: Very well, Mr. Brazier.

MR. BRAZIER: Mr. Chairman and members of the Commission: It is my intention, subject to the approval of the Commission, to call two witnesses in further support of the brief and the supplementary brief presented by the Province of British Columbia.

I shall first call Mr. Brown, who will deal with the latter part of the brief, which follows up the part of the brief which he spoke to, when the Commission sat at Victoria, last June.

THE CHAIRMAN: What are Mr. Brown's initials?

MR. BRAZIER: J. E. He gave evidence on the 22nd and 23rd of June.

THE CHAIRMAN: Is it spelt B-r-o-w-n, without an "e"?

MR. BRAZIER: Brown, with no "e".

I would like it, therefore, if pages 11 to 14 of the further submission which was filed on behalf of British Columbia be read into the record and taken as read. Copies of it have already been distributed to all parties some time ago. Pages 11 to 14 read as follows:

In the Brief which the Government of the Province of British Columbia presented to this Commission in Victoria on June 22nd, 1949 it was suggested that further amplification of the Brief might be made at subsequent hearing of the Commission. After dealing with the geographical and economic situation of British Columbia generally it was submitted in the principal Brief that the railways should be required to fix their rates more nearly on a "cost of service basis". It subsequently appeared that it would be advisable to further explain our representations in this regard.

In the first place we do not envisage that

"the cost of service" principle will result in a uniform rate for all commodities nor do we suggest that the railways be required to determine the cost of service on each individual shipment. Further we realize that the adoption of this principle cannot be made except over a considerable period of time. It is our suggestion that in the future this should be a guiding principle in the fixing of freight rates so that in due course it becomes the basis upon which the freight rate structure is built. In our opinion the principle can be adopted by determining the cost of service on the main types of traffic handled by the railways. When these costs have been determined they can then be applied to all similar types of traffic. For instance, in our opinion, it might be sufficient to determine the cost of service for the 78 odd commodity groups presently included in the reports made by the Canadian railways to the Board of Transport Commissioners. It is admitted that the adoption of this principle will involve the compilation of traffic statistics which are not at present available but we do not concede there should be any great difficulty in the compilation of them or that the lack of them is any answer to the adoption of the principle. In this regard we would refer the Commission to the various detailed studies of costs made by the officials of the Interstate Commerce Commission.

By "costs" we mean all direct costs and the properly apportioned amount of indirect costs such as property taxes, rents, depreciation, and general overhead but not including interest, profit or income taxes calculated on a system-wide basis. The actual freight rates should be sufficient to cover these average long run costs plus a sufficient amount to

the cost [illegible] will result in a uniform rate [illegible] nor do we [illegible] determine the cost [illegible] single commodity [illegible] except [illegible] time. [illegible] should be [illegible] weight [illegible] in due [illegible] basis upon which [illegible] weight rate [illegible]. In our opinion the [illegible] be determined by determining the cost [illegible] main types of traffic handled by the railways. When these costs have been determined they can then be applied to all similar types of traffic, [illegible] basis, in our opinion, it might be found to determine the cost of service for the 78 commodity groups presently included in the records made by the Canadian railways to the Board of Transport Commissioners. It is admitted that the adoption of this principle will involve the [illegible] which are not at present available, but we do not consider these should be any great difficulty [illegible] that the lack of them [illegible] the adoption of the principle. [illegible] we would [illegible] Commission [illegible] made [illegible].

[illegible] with [illegible] property, [illegible] property taxes, [illegible] overhead but not including interest, [illegible] taxes [illegible]

[illegible]

av[illegible]

produce a determined fair rate of return on the investment of the railway company. We submit that the rates determined in this manner, including standard mileage class rates and the normal commodity rates now in effect, should be determined by the regulatory body and should not be subject to change except by order of the regulatory body upon satisfactory proof that the costs have either increased or decreased.

We are willing to concede that as long as other forms of transportation are permitted to continue without any regulation of their rates it is reasonable that the railways should be allowed some latitude in meeting competition. This, however, should be a matter for the business judgment of the railway in question and any loss sustained by the railway in meeting such competition should not, we think, be added to the rates paid by other shippers. In the event that the railway company should decide to meet certain competition by applying something less than the normal rates as determined on the basis above mentioned the railway would have to sustain the loss resulting therefrom. Definite figures are not available at the present time but an estimate was made by one railway official in the 21% Case to the effect that competitive rates only affected about 15% to 16% of the traffic handled by the railways. If this estimate is approximately correct it would not appear that the loss sustained by the railways would be a particularly serious matter for the management to control. This procedure would also have the tendency of making the railway management more cautious in the granting of competitive rates.

In our original presentation it was

contended, on a basis that all transportation rates should be controlled upon the same principles, that all railway freight rates should be fixed by the regulatory body. The railways have taken the stand that generally speaking this would be an unworkable plan in practice. We do not concede that this is so, particularly if the method of determining freight rates which we have suggested is adopted. We are willing to concede that proper protection would be given to the shippers if control of competitive rates should be exercised by the regulatory body in cases where the railways wished to eliminate competitive rates which they have established of their own volition. We suggest that after competitive rates have been established by the railways that the regulatory body in considering a change in such rates should give consideration to the economic position of the shippers affected by such change.

There is one matter which has been the subject of representation in recent freight rate cases upon which we made no statement in the original Brief and upon which we think we should advise the Commission of our opinion. We are satisfied that a percentage increase in freight rates, commonly referred to as a horizontal increase, generally speaking adversely affects long haul traffic in dollars and cents. This fact has been recognized by previous Commissions and by at least one railway administration. In this regard we specifically refer this Commission to the Duncan Report on Maritime Claims.

The difficulty is in proposing a workable alternative to this method of granting general increases in rates. In our opinion the most

satisfactory alternative is one which, while not attempting to scientifically apportion the burden of the increase, will give some measure of relief to long haul traffic. We submit, therefore, that the most equitable way of granting a general increase in rates is by a combination of a percentage increase and a constant amount in dollars and cents after a certain maximum increase has been reached. We would suggest, for instance, that the percentage increase might be applied to all rates up to destinations of a distance equal to the average length of haul and that all rates thereafter be increased by a fixed amount.

If the present method, which requires any shipper adversely affected by a rate to make an individual application to the regulatory body, is continued it would in our opinion be necessary for the regulatory body to give consideration to factors which the present Board of Transport Commissioners for Canada and its predecessor, the Board of Railway Commissioners for Canada, have stated in numerous judgments are outside its present jurisdiction, or to be more specific that the economic effect on the increase upon the shipper be taken into consideration.

All of which is respectfully submitted.

MR. BRAZIER: I call Mr. Brown.

J. E. BROWN, called:

EXAMINED IN CHIEF BY MR. BRAZIER:

MR. BRAZIER: Q. I wish to direct your attention, Mr. Brown, to certain matters in particular which have been mentioned in the briefs filed by the Canadian Pacific Railway; and I ask you first to consider certain statements which are contained in Part II of the submission of the Canadian Pacific Railway, starting at page 100, where they deal with the cost of service principle.

I would direct your attention first of all to the statement on page 100, contained in the fourth paragraph on that page.

THE CHAIRMAN: Is this Volume I or Volume II?

MR. BRAZIER: This is Part II, my lord.

THE CHAIRMAN: What is the page number, again?

MR. BRAZIER: Page 100; and the fourth paragraph on that page reads:

> "There is some difficulty in reconciling the position of British Columbia on the point. At page 2342 of the transcript the following passage appears:
>
> > 'In conclusion, the Province of British Columbia advocates the application of the principle of pricing all forms of transportation on the basis of cost of service rather than value of service.'"
>
> However, on page 2341 of the transcript and on page 11 of the final submission of British Columbia dated September 12, 1949, the position is stated to be that the pricing of transportation should be

more nearly on a cost of service basis."

I would ask you to comment upon that paragraph.

A. On page 15 of the original submission of the Province of British Columbia, dated June 22, 1949, in the last paragraph --

THE CHAIRMAN: Does the Canadian Pacific say there is a contradiction between your two statements?

MR. BRAZIER: They are suggesting that we take two different positions there.

THE CHAIRMAN: In the first one you say that you advocate the application of the principle of pricing all forms of transportation on the basis of cost of service rather than value of service; that is the first thing. And in the second one, the position is stated to be that the pricing of transportation should be more nearly on the cost of service base.

MR. BRAZIER: I presume the distinction is between an absolute adoption of the principle and a modified adoption of the principle.

THE CHAIRMAN: That you are hedging a bit now, is that the idea?

MR. BRAZIER: That is what they are suggesting, yes. You were referring to the original submission made by British Columbia.

THE CHAIRMAN: I was talking about what Mr. Brazier points out as being in the Canadian Pacific brief at page 100, and that you changed your attitude somewhat.

THE WITNESS: That is right. I do not think that is true. However, on page 15 of our original brief, in the last paragraph --

MR. BRAZIER: Q. What were you going to point out was said in that last paragraph?

A. "This change in viewpoint supports the adoption of the principle of pricing transportation more nearly in relation to the cost of the service rendered."

That is our intention, I think, throughout.

THE CHAIRMAN: What page is that?

A. Page 15, in the last complete paragraph.

MR. BRAZIER: Q. Our position has been throughout these hearings that it should be more nearly, rather than absolutely, on that principle?

A. Correct.

Q. Continuing on page 101 of the Canadian Pacific brief, Part II, they make this criticism of certain material presented in the submission of the Province of British Columbia, starting in the middle of the page,-- reading --

THE CHAIRMAN: What page?

MR. BRAZIER: Q. Page 101, in the middle of the page:

"Canadian Pacific points out that the following errors were involved in the first of the two steps above referred to:

(a) It was a serious error to restrict the study only to railway operating expenses and not to include interest, profit or income taxes. . ."

They refer there to page 12 of our original brief.

"In Canadian Pacific's view at least interest and probably the return to equity security holders on their investment are in effect costs which must inevitably be incurred, regardless of traffic volume. It could not therefore be argued, even if it were admitted that 100% of operating costs varied with traffic, that the conclusion

made by Mr. Brown proves the case for the application of the cost of service principle.

(b) The use of a single price index based upon only four series is an unduly narrow base on which to make the adjustment which Mr. Brown sought to make and this may in itself produce substantial error."

I think, dealing with paragraph (a), what comment have you to make in regard to that?

A. First, with regard to the question of including income tax as a cost, it may be true that in making a rate award, a regulating body might take into consideration the amount of income tax that a corporation would be subject to; and I understand that this is usually done. But it still does not seem valid to consider this as a cost factor in the ordinary sense of the term in that it is always computed from the net profits.

With respect to the return on capital, the question whether this should be treated as a cost of production, has been a subject of argument for many years.

As I understand it, capital is invested in the expectation of receiving an annual payment for its use, plus the ultimate return of the original investment. And it seems to me that the rate of return in a particular firm or industry largely determines whether more capital will be invested in that industry.

In that sense, capital is a cost. But once an investment has been made, it no longer represents a cost in the ordinary sense.

If the return on the investment is inadequate, control of the firm may pass from the holders of the equity to those who have a fixed interest in the firm.

The firm, however, can continue to operate indefinitely, provided that revenues meet all the operating costs.

I am not suggesting that this is a desirable situation, of course. Even though I think it is of doubtful validity to include rate of return on investment as a cost factor, I have given some thought to the statistical problem involved if one were to try it.

For example, on page 27 of the appendix to Part I of the Canadian Pacific brief, we find that, comparing 1948 with 1898, the net railway property investment has been increased by approximately 3.7 times, while revenue freight ton miles increased by 11.8 times; and revenue passenger miles by 3.5 times.

There is, however, the danger of comparing single years. There may have been much more unused capacity in 1898 than in 1948. There is a further complication that capital is not always invested in step with growth in traffic.

Then there is always the problem of depreciation. Some of the capital goods may be fully depreciated and therefore their net value be zero and yet be in actual daily use.

There is a further complication of a secular decline in interest rates. That capital investments have grown with traffic, I think no one will deny, but whether proportionally as much, I am not prepared to state.

Q. Continuing on page 101 the Canadian Pacific takes exception to the price index used in the British Columbia submission as follows:

"(b) The use of a single price index based upon only four series is an unduly narrow base on which to make the adjustment which Mr. Brown

sought to make and this may in itself produce substantial error. The Interstate Commerce Commission in making similar studies, used a total of 24 such indices. The possibility of error in restricting the number of series in the index can be seen by reference to the fact that the indices used by the Interstate Commerce Commission in the study 'Exploration of Rail Cost Finding Procedure and Principles Relating to the use of Costs' of October, 1948, varied from 110.3 to 181.4, using the base of 1939 equals 100."

(Page 14783 follows)

"(c) Mr. Brown's calculation assumes that the same weighting of the index he used would be applicable to each of the years regarding which he made his adjustment".

Now, Mr. Brown, I would like you to comment upon that criticism.

A. I believe the reference is to this particular study, and the title we have is "Explanation of Railway Cost Finding, Procedures and Principles Relating to the Use of Cost". The date is April, 1948, whereas I believe I suggested it is October, but I think it must be the same.

Q. You will find the figures are the same in there as those to which the C.P.R. have referred to.

A. That is correct. The first point is whether the average change in the prices of the commodities which were omitted from our index have or have not changed in the same manner and to the same extent as those that were included. This of course could only be determined by an exhaustive examination of the changes in price of all the many items, such as lubricating oils, office supplies, etc. which were omitted.

I personally would be very much surprised if it were not found that the prices of those commodities had moved on the average in the same direction and in approximately the same amount as the prices of those included. In any case it should not be overlooked that, taken all together, the excluded items represent less than 20 percent of the total outlay. Our index includes ties, and steel rails, and in my opinion the

price changes in those two items would be representative of the price change in other wood products and other iron and steel products which are omitted.

Furthermore I can see nothing wrong with the single index per se. It is not very enlightening to compare the index we prepared with those to which reference has been made by the Canadian Pacific, which were designed for use in a different type of analysis.

The Bureau of Accounts and Cost Finding of the I.C.C. tried to solve the same problem by considering the various cost elements and by applying special price indexes which were related to each of the specific elements. We all understood it to deal with aggregates.

The more surprising and, shall I say, vindicating thing is the fact that the end results were so nearly alike, that is, the result of this study and of our own were nearly alike. We dealt with aggregates and they dealt with components.

THE CHAIRMAN: They dealt with what?

A. The component elements of cost.

MR. BRAZIER: Q. And the results they obtained in the more detailed study approximate to the result that you obtained in your study of the aggregates, is that correct?

A. Substantially, yes. The question of weights has been raised, whether the weighting system used in our index was satisfactory or not. It seems that there are, at least there are generally, two possibilities. One is to use the base year weights, that is, the starting year, or the given year weights, that is, the last year of your series; or in some cases

you use some combination of those two.

Now, it is generally held that the base period weights give an upward bias to an index while the given year weights give a downward bias to the index. In the particular index which we constructed after examination of the relative changes in quantities purchased during the period, we decided to take the average of the entire period, and in my opinion that reduced any bias that might be there to a minimum.

Q. Just for the information for some of us here will you explain what you mean by bias.

A. Well, bias is the term used to indicate that an index loses its representative characteristic because of the changing significance of the various items that make up the sample on which the index is constructed. I don't know whether that is a very adequate explanation.

Q. And if you take the base year the significance is too low, and if you take the given year, the last year, the significance is too high, is it?

A. No.

Q. Or the opposite?

A. The reverse.

Q. Now, going on further, on page 102, the first three paragraphs:-

> "As to Mr. Brown's second step, he made the error of using the actual locomotive miles without ajustment. The necessity for adjustment is obvious because locomotives have changed in size

and in power, and therefore in net output per locomotive mile, over the years. In addition the output per locomotive mile has increased due to changes in loading practices which were forced upon the railroads during the war. The Car-loading Order of the Transport Controller compelled all shippers to load freight into the cars to the maximum capacity of the cars. The effect of loading practices during war time and post-war years could be seen very clearly in Mr. Brown's charts 1 and 3, because the war years appear sharply above the regression line, demonstrating that the net ton miles produced per locomotive mile are greater than would be expected on a normal relationship. Mr. Brown apparently recognized the difficulty but failed to use an adjusted figure of locomotive miles to compensate for these factors."

Now, what do you say in regard to that criticism, Mr. Brown?

A. Possibly the first and more basic question is whether locomotive miles is a satisfactory unit for measuring the input of work. I suggested in Victoria that probably gross ton miles would be a more satisfactory unit, but on further consideration of the question I cannot see that it would make any very material difference to the results of comparing input with cost. I would have then a direct relationship between cost, which in that case would be output, whereas I have

attempted to say: relate cost to input, input to output. If I use gross ton miles, I would bridge that one gap, it would be cost to output.

- - -

(Page 14789 follows)

Now, dealing with the specific complaint that we failed to recognize fully the disturbing effect of technological change and also the more or less complete disappearance of unused capacity existing during the war period, I would like to call your attention again to Charts one to four in our original submission.

Q. I have some extra copies of that, sir. Probably the Commission could follow a little closer if they had one. Rather unfortunately, Mr. Chairman, you will recall the charts were put in between the pages and the chart-pages were not given a number. Chart No. I appears after Table VIII which is a couple of pages past Page 13. There is Page 13, Table VIII and then Chart I. Will you go on, Mr. Brown?

A. This is rather a little involved --

THE CHAIRMAN: Is this chart explained in the brief anywhere?

MR. BRAZIER: Yes, it is explained in the original brief.

THE WITNESS: I wish to make some more comments about it in answer to the criticism by the Canadian Pacific and once again I will have to go through the two steps, the cost against input and the input against output. Those are the two steps in the procedure that is involved.

THE CHAIRMAN: Input of what?

A. Input of work, if you like.

Q. And output of what?

A. Output of service.

MR. BRAZIER: You might, Mr. Brown, try to explain these technical terms as much as you can as you go along so that we can all understand everything.

A. I have used the locomotive mile as being a unit

of measure for input of work and the net ton mile as the unit of service provided by the railway. Now, in this Chart I, considering just the average relationships which are depicted by the line of regression, by the fitted line, for example, taking the first cycle which is from the year 1924 to about 1937, that is the first line to the left on Chart I, while total number of locomotive miles increased from 45,000,000 (I notice they have left off the "millions" in that chart) while the traffic increased from 45,000,000 up to say, 70,000,000, during that increase in traffic there was a corresponding increase in cost of about $103,000,000 to about $183,000,000.

THE CHAIRMAN: Where do those figures appear?

A. On the bottom and sides of the charts. The number of locomotive miles is given along the bottom, sir. If you will go up to the regression line you are given 45,000,000 locomotive miles. The corresponding average cost to that is $103,000,000.

MR. BRAZIER: And at the top of the line you come to the 70?

A. Yes, at the top of that line is 70,000,000 locomotive miles and the cost corresponding to that was $183,000,000.

THE CHAIRMAN: That "70" means millions?

A. Yes, they forgot to include "million miles" in the chart. Now, that simply means that while traffic in that particular cycle, in that series of years from 1924 to 1937 increased from 45,000,000 to 70,000,000 which is an increase of 56 per cent, during that same period the deflated costs increased from $103,000,000 to $183,000,000 which is an increase of 78 per cent, so while the input of work increased by 56 per cent, the cost increased by 78 per cent for that particular cycle.

Q. These are all Canadian National?

A. In this particular case, I think it is Canadian Pacific

MR. BRAZIER: Canadian Pacific.

THE CHAIRMAN: Well, that chart says "Canadian National Railways total operating costs". I thought this chart would apply to that?

A. No, I am sorry, they were not placed in proper sequence, sir.

MR. BRAZIER: Table VII which is just before that -- there are two tables, my lord, Tables VII and VIII and they are followed by Charts I and II. Table IX comes in there too. If you will look back at Table No. VII, that is the one to which this chart refers -- "Canadian Pacific total current operating costs".

THE CHAIRMAN: Yes, it is Table No. VII -- not Table No. VIII.

MR. BRAZIER: No, that is referred to in a subsequent chart.

THE WITNESS: We are just referring here, sir, to the average results over this period of years and I suggested in the first cycle, that is, from 1924 to 1937 for a 56 per cent increase in output of work there was an actual 78 per cent increase in deflated operating costs.

THE CHAIRMAN: Where did you get your figures from?

A. I read them off the charts, sir.

Q. Where did you find them originally?

A. These are taken from the Statistics on Steam Railways from the Dominion Bureau of Statistics.

MR. BRAZIER: Now, the other line there deals with the period 1938 to 1947 inclusive?

A. Correct.

Q. What does that show?

A. In that period you will find that an increase of from, say, 50,000,000 locomotive miles to 80,000,000 locomotive miles is a 60 per cent increase. During the same time the costs went from $115,000,000 (that is the deflated costs) to $188,000,000 or an increase of 63 per cent.

Q. That is the picture as far as the Canadian Pacific Railway is concerned?

A. Right.

Q. Would you turn now to Chart II. Chart I is followed by Tables IX and IX-A and after that is Chart II. That deals with the Canadian National.

COMMISSIONER INNIS: How do you go about deflating these costs?

A. Through the index that was prepared. You will recall we are taking actual current costs and we constructed an index which, as far as I can determine --

Q. On the 1939 basis?

A. Yes, we took the basis 1935 - 1939, took the average cost on that basis but the weights were on average quantities for the entire period from 1924 to --

Q. Then you deflated?

A. Yes, we deflated, in order to get rid of the disturbing effect of changes in price level. We are trying to determine the effect of changes in volume of cost.

MR. BRAZIER: What does the Chart show as far as the Canadian National is concerned?

A. The Canadian National -- we might take, for example, on this regression line on Chart II 45,000,000

locomotive miles and at the top of the line, say, 85,000,000 locomotive miles which is an increase of 89 per cent against a deflated operating cost of roughly $131,000,000 or $132,000,000 and $230,000,000 or thereabouts, an increase of 75 per cent.

Q. That is similar to the picture shown for the Canadian Pacific Railway?

A. Somewhat the same, yes.

COMMISSIONER INNIS: Does this change in the direction of the line mean that the railway is becoming more efficient during the period?

A. That is the conclusion I drew, sir, in the case of the Canadian Pacific Railway.

THE CHAIRMAN: Not of the other?

A. I can see no indication in the Canadian National. I would just like to point out that those percentages that I have given obviously would be given if you took out segments of these regression lines.

MR. BRAZIER: That is if you took--

THE CHAIRMAN: Would all these figures affect the question of the cost of service as against the value of service?

MR. BRAZIER: The purpose is to show, my lord, that the operating costs of the railway varies almost directly with the traffic. That is the purpose of these charts and tables.

THE CHAIRMAN: With the volume of traffic?

MR. BRAZIER: With the volume of traffic. There have been a great many studies made on this subject and at one time it was accepted that only 50 per cent or 60 per cent of the railway costs were fixed or changed with the traffic. The Interstate Commerce Commission recently came to the conclusion that 80 per cent to 90

per cent varied with the traffic -- cost of operating.

THE CHAIRMAN: So you are building up a case for the adoption of the cost of service principle?

MR. BRAZIER: That is right, showing that the cost of operating Canadian railways does vary almost directly with the volume of traffic they handle.

COMMISSIONER ANGUS: Costs being only the operating costs?

THE WITNESS: Just the operating costs, yes.

MR. BRAZIER: Will you go on, Mr. Brown?

A. I have tried to show this in those two charts very roughly that the input of work and the cost moved in the same direction and about the same amount for the two railways. Now, the next step is to consider the input of work in relation to the output of service which brings us to Charts III and IV.

Q. Those charts, Charts III and IV, my lord, are found after Page 14 of the brief. I might at this time point out that certain additions have been made to the charts as they were originally contained in the brief because of subsequent information which was obtained. Mr. Brown, will you explain that?

A. In Charts III and IV as they were originally placed in the brief, no regression line had been fitted to the period from 1924 to 1937. That is true both in III and IV.

Q. You have just dealt with the latter period -- 1938 to 1947?

A. Yes, I have taken the liberty of drawing in "fitting by inspection" some lines to these two periods, that is, both in Chart III and Chart IV and since it has been fitted by inspection if it were fitted mathematically you would have probably a slightly different slope -- not

very much -- but not sufficient, I think, to mar the relation of our argument.

COMMISSIONER INNIS: What is this downward line on Chart III?

A. Could I make some comment about that in just a minute. Taking Chart III in the period 1924 to 1937, that is the line furthest to the left, you have, say, 9,000,000,000 net ton miles and going up to, say, roughly 18,000,000,000 net ton miles which would be 100 per cent increase and while you have 100 per cent increase in the service provided, you go from 19,000,000 freight locomotive miles to 38,000,000 freight locomotive miles, which, I think, is also a 100 per cent increase. So in that first business cycle, if you like, for 100 per cent increase in output, that is on freight, you have 100 per cent increase in input of work done.

(Page 14800 follows)

As we have already said in Chart 1, since you have approximately a 100 per cent increase in cost, deflated cost, for 100 per cent increase in input of work, therefore the assumption is that a 100 per cent increase in the output of service provided -- and in this case we are speaking of freight service -- requires roughly a 100 per cent increase in deflated cost.

In the case of Chart 4 the argument is again pretty much the same. In the case of the Canadian National the increase from 9 billion to 18 billion net ton miles causes an increase in freight locomotive miles from about 20 million up to roughly 41 million.

MR. BRAZIER: Q. Showing roughly a 100 per cent increase too?

A. That is right. Now, the question was raised about technological changes and technological improvement during the period, and also the effect of, shall we say, overloading or fully loading cars during the war period. Since these relationships have been fairly adequately described, at least we think so, by what is called a straight line equation in which Y is equal to A plus BX, and since if you change BX by 100 per cent you get a corresponding percentage change in Y, I think it therefore follows that the constant element A is negligible.

Q. Is what?

A. The constant element or constant factor A in the equation is negligible.

Q. Approaches zero?

A. Yes.

COMMISSIONER INNIS: Q. Does this tell us much more than that the railways have probably a pretty efficient control of their accounting system?

A. I think it shows somewhat more than that. You are questioning again the difference between costs and expenditure?

Q. I am simply questioning the system of control of expense worked out by the railways, the type of accounting system, supervision and so on, which is reflected in this close parallel that you have worked out.

A. I quite recognize, Dr. Innis, the fact that there is a distinction between costs and expenditure, and as you say it is quite obvious that management does exercise considerable control over the expenditure. The difficult question to answer is to what extent the expenditure they make is different from what they should have made. There seems no way of determining what they should have made. Since it covers such a long period of time it seems difficult to suppose that they could have loaded it on the good years and taken it off the bad years to any appreciable amount. I will admit there must be some.

MR. BRAZIER: Q. All right, Mr. Brown, will you go on?

A. I was trying to get around to the second step in the argument that since apparently the constant element is not very appreciable, if you had a 25 per cent increase in efficiency you would have a line drawn in as I have indicated with that dotted line. That broken line on Chart 3 represents the same conditions as prevailed before that 25 per cent increase in efficiency, that is, 25 per cent greater output for a given amount of input. We arrived at that 25 per cent in this way. On page 6 of Part 1 of the Canadian Pacific brief they have a table dealing with the increase in tractive power of their locomotives.

Q. That is based on the information which the

C.P.R. themselves have given in their brief?

A. I computed it from that and that came out to be 25 per cent.

Q. You did not have that information when you made the original study?

A. No, sir. I think probably that does not account for all the increase in efficiency. There may be other elements of efficiency which are not included in that broken line, but it indicates what the effective increase in efficiency would do. The next part is the increase in loadings, or shall we say the full use of capacity during the wartime period. Under war conditions they were able to, shall we say, hold up trains until they had fully loaded all the cars, in other words, make complete and full use of their capacity. I think that is true of other businesses as well, not only railways.

Consequently you have a regression line in Chart 3 dealing with the war period from 1939 or 1938 up to 1947 which has an entirely different slope in this instance. For a given increase in input they get a greater than expected percentage in output, but I suggest that can only take place when normal commercial conditions are not in effect.

Q. And they do not affect the long term trend?

A. That is right.

Q. Is that all you have there?

A. I think so.

Q. I want to refer you to another statement of the C.P.R. at page 104 of their brief which reads:

"In any case the use of the technique employed by Mr. Brown can only prove that the two series used in his graph will vary together but they offer no proof as to what makes these series

vary together. Indeed it may well be that factors not taken into consideration are the cause of this." Would you make a comment in regard to that criticism?

A. The reaction to these correlations which we have been examining has varied all the way from those who consider that we are describing a truism, something that has to be, to those who in the case of the Canadian Pacific suggest probably they are spurious, something false about them. My personal feeling is that neither position is quite correct. First some of the operating costs must obviously vary directly with locomotive miles.

THE CHAIRMAN: Q. With what?

A. With locomotive miles, with our unit of input. Train crew wages, fuel and things of that nature must vary, I would say, 100 per cent when you have corrected for changes in the price level. Then presumably there are other factors which are not related to the locomotive miles, and I had been led to believe in some instances some of them did not vary at all, and some varied 90 per cent, 80 per cent, 70 per cent, and I fully expected when I originally plotted this material that I would find a curvilinear relationship. In other words, your costs would not increase as rapidly as your input of work. It would increase with decreasing amounts.

MR. BRAZIER: Q. Such a study would be indicated by a curved line rather than by a straight line?

A. That is correct. I must say I was very much surprised when I did not get that result. I tried to check with a number of people as to why it turned out that way but have never yet found any answer that seemed to contradict it, that it is a straight line relationship. I must say also that at that time I was unaware of the I.C.C. studies or of the opinions of the authors to whom

we made reference in our original brief, and of the statement of the Canadian Pacific that in their opinion there was a substantial degree of variability. To me the surprising thing is that over the years the amount they have had to pay out for work not directly associated with moving a train has fluctuated almost exactly the same way as the amount they paid out for the movement of the train.

Q. I have a note in reference to page 102 of the Canadian Pacific brief where the following statement is made:

> "Mr. Brown could have had an equally close fit of his data to a line of relationship in two quite different graphs; that is to say, the same relationship might have been obtained in one graph which would show that there were no costs which were constant and in another where as much as 99 per cent of costs were constant and only one per cent variable with traffic."

What comment have you to make as to that suggestion?

A. I find myself a little at a loss to quite understand the criticism. If they mean that you can fit a different line to the data, unless we have made a mechanical error I do not see how that is possible. The direction of the line is defined or controlled, if you like, by the data, and anyone using the same method, called the released squares method, would get exactly the same fit. However, if they mean it is possible to have a general regression line of this type in which Y is equal to A plus BX, and in which A is very large relative to the BX, if that is all they mean I admit it is true, but it does not apply to this case.

Q. It would not fit the data with which you worked

in this case?

A. That is right.

Q. So you say the only error can be a mechanical one in the tabulation?

A. That is correct.

Q. Mr. Brown, the Canadian Pacific suggests that by the simple process of extrapolation you arrive at a set of answers which are patently absurd.

THE CHAIRMAN: Where is that?

MR. BRAZIER: I am just going to quote from the brief at the bottom of page 102 as follows:

"Mr. Brown apparently failed to appreciate that his own equations, developed from the Canadian Pacific data, if literally interpreted, show that it would be possible to have 12,880,000 locomotive miles without any expense whatever for the period 1924 to 1937. This is easily estimated from the equation in Table 9 which shows that if there were no locomotive miles Canadian Pacific ought to have a net profit of $41,289,000. This can also be seen from projecting the regression line for the period 1924 to 1937 shown on Chart 1 downwards on the Chart to the point of intersection with zero locomotive miles.

"By a similar use of Mr. Brown's formula, it can be shown that for the period 1938 to 1947 the Canadian Pacific should have had a profit of $7,284,000 with zero locomotive miles (see Table 9a) and would have had no expense whatever with 2,995,000 locomotive miles. Canadian Pacific therefore is of the view that the equations developed by Mr. Brown can give no useful indication whatever of the extent to

which operating costs are constant."

What is your reply to that criticism?

A. First of all, I think it is generally recognized that anyone who extrapolates or goes outside the limits of the data must do so at his own peril. You must remember in this particular instance the zero point or if you like the lines of reference are very, very far removed from the little segments of the quandrant that you are dealing with. These are millions of locomotive miles. If you drew up a chart full scale employing the same scale your origin would be away off somewhere near the walls to make a chart large enough. Therefore to extrapolate down to the line of reference just is not warranted in my humble opinion. I have even gone further. I have tried to relate this data with that for a very small railway, and found that you have no possible way of bridging the gap between the two sets of data.

Q. If you have got the entire data between two points you cannot draw any conclusion by a mere extension of the line. Is that correct?

A. That is correct.

Q. Now, Mr. Brown, I should like you to direct your attention to page 104 and over to page 105 of the C.P.R. brief where they point out the distinction between expenditures and costs as it applies to the material used in your cost study. I think you are familiar with those pages and their statements there?

A. Yes.

Q. What have you to say?

A. I believe this is the same question that Dr. Innis has already raised and which I have tried to answer.

Q. Do you wish to add anything?

A. My only observation is it seems unfortunate that the Canadian Pacific should not have supplied some concrete data on which one could judge the merits of the case.

Q. That is, before you could judge the merits I presume you would have to know what the expenditure would have been but was not in any one particular year?

A. That is correct.

Q. And unless such data was available no useful purpose could be served in considering the situation?

A. That is my opinion, sir.

Q. I should now like to leave Part 2 and take Part 1 of the Canadian Pacific brief.

(Page 14810 follows)

Leaving Part II and taking up Part I of the Canadian Pacific brief and quoting the first sentence on page 58 of Part I, they say:

"Canadian Pacific submits that the cost of service principle is unsound."

I would like you to comment in regard to that statement and what follows in the Canadian Pacific brief.

THE CHAIRMAN: That is a pretty wide mandate which you are giving to Mr. Brown.

THE WITNESS: That is correct, sir.

THE CHAIRMAN: Are you not bringing in the whole cost of service principle over again?

MR. BRAZIER: Yes, my lord.

THE CHAIRMAN: All right, but we had it in British Columbia.

MR. BRAZIER: Yes.

THE CHAIRMAN: Go on.

THE WITNESS: Presumably they mean that of the various pricing policies that might be adopted pricing on the basis of cost plus some recognized mark-up is the least satisfactory in that it would be less profitable to the railways and if I read their argument correctly, more costly to the shippers. That is, there are a number of pricing policies which might be used, and of which the railways now have one.

We have suggested an alternative pricing method, and they have suggested that it is unsound because, presumably, it would lead to a less profitable situation for themselves, and in the long run, I presume, it would harm the shippers.

THE CHAIRMAN: Q. That is their general attitude, is it: that it is unsound because it would lead to higher rates in the long run?

A. Yes. I think that is what their main argument is.

Q. Do they set out here the grounds for that position?

A. That is right.

Q. Now, you are going to show us where they are mistaken. All right, Mr. Brown.

A. They state that the shift in prices resulting from an application of the new pricing policy would materially lessen the volume of traffic thereby reducing railway income and adversely affecting most shippers.

Unfortunately the Canadian Pacific, outside of some general references to silk and coal, do not attempt to substantiate their observations, so that it boils down to one hypothetical argument against another.

As I understand it, the argument is based on the premise that the elasticity of demand for transportation varies as between commodities to such a degree that one can only achieve maximum return by paying heed to these elasticities when pricing.

I think it would be recognized that the elasticity of demand for transportation is actually a derived elasticity of demand for the commodities themselves.

While the basic commodities may be relatively low in value, nevertheless the probability is that the elasticity of demand for these commodities is much smaller than for the highly processed, or high valued goods.

THE CHAIRMAN: Q. Much smaller?

A. The probability is that the elasticity of demand is actually much smaller for the basic commodities than it is for the manufactured or highly

processed goods.

Q. Have you any commodities in mind?

A. Some years ago I read some studies on elasticity of demand. The references slip my mind at the moment. I think it was an American named Schultz who made a considerable investigation into the elasticity of demand for agricultural products. And as I recall it, the results of his study were to the effect that the elasticity of demand for these particular commodities was not as great.

Q. Was not as great?

A. Was not as great as for manufactured goods.

The only manufactured goods that I know of was a study dealing with elasticity of demand for motor cars. It was carried out, I think, by General Motors; and I think the result was that an increase in price of 1 per cent reduced the volume sold by 2 per cent. I think that was the relationship in that case.

COMMISSIONER ANGUS: Q. Taking into account possible alternative sources of supply, would not a high rate tend to move it some distance?

A. You mean, bring in a substitute commodity?

Q. Yes.

A. I suppose that could happen, without any reference to elasticity of demand for the commodity.

Q. It could affect the elasticity of the demand itself?

A. Oh, quite, yes. Therefore, it seems to me that their argument is unsound right at the start. If we, however, adopt the argument that the volume of traffic will be reduced as a result of these possible changes in rates, it may be that the reduction in traffic is warranted.

The Canadian Pacific on pages 36 and 37 of Part I point out that too much of our national effort may be devoted to transportation if uneconomic rates are charged. So you may actually have a situation which would reduce the volume of traffic; but that reduction in volume may actually be warranted.

MR. BRAZIER: Q. And be to the national benefit?

A. That is correct.

It would, however, have been more helpful for any proper appraisal of their position if they had given specific examples indicating which traffic would be affected and to what extent.

A reading of their brief suggests that the major segments of the traffic which are not now being carried at remunerative rates are the grain products which move under the Crow's Nest rates, as well as much of the passenger and l.c.l. traffic.

It appears, moreover, that they do not fear any reduction in the volume of grain which might be carried if the rates on these low valued products were raised to remunerative levels.

THE CHAIRMAN: We shall take a few minutes for recess, now.

(Page 14820 follows)

MR. BRAZIER: Just before the adjournment, Mr. Brown, you were making reference to Crows' Nest Pass and passenger and l.c.l. traffic, which from the C.P.R. Brief appeared to be the major segments of the traffic which were not paying their way at the present time. I wonder if you would just continue now.

A. I think I should just say, as it appears from the Brief of the Canadian Pacific, that they did not fear any reduction in the volume of grains which might be carried if the rates on these low valued products were raised to remunerative levels in the case of grain products. It is quite probable however, that any attempt to increase the rates for passenger and for l.c.l. traffic might well produce a substantial reduction in the volume of this traffic.

THE CHAIRMAN: Now, does the C.P.R. say that?

A. No, I am just saying that. The basic question in those two instances, however, appears to be whether the railways can really provide these two services as economically and as effectively as other types of carriers.

MR. BRAZIER: On page 61 of the C.P.R. Brief Mr. Brown, they state:-

> "The system of rate-making used by Canadian railways is the value of service principle."

What objections have you to this pricing policy?

A. Professor Locklin, who appeared before this Commission, has defined the value of service

principle as the highest charge that can be levied without preventing shipments from moving. He points out further that that limit is determined by no one factor. As far as I can understand it, this is a price which will lie somewhere between the lowest rate the railway will accept and the highest rate the shipper will pay. It appears that the railways are not prepared to go below an amount which will at least cover their out-of-pocket costs.

THE CHAIRMAN: Does not the C.P.R. say right there that this principle does not result in all traffic paying all that it can bear? Do you take issue on that? You have just quoted somebody else saying that that means - -

A. I am sorry, yes.

Q. That they would make it pay all that the traffic would bear. The first thing that they say is that this principle does not result in all traffic paying all it can bear. Do you say it does result in that?

A. Well, probably the question hinges on the definition or meaning of the word "bear".

Q. They don't wish you to stop moving, I suppose.

A. He might have alternative means of moving, so therefore he would not stand all he could stand to pay.

Q. But all that it can bear, that was, without stopping the traffic; paying all it can bear. Keep on raising the price until it gets so high that it stops shipment . Is not that what that means?

A. Yes, but it depends whether that is the only means by which the traffic can be moved.

Q. I know. That is one of the factors which would stop it from going up higher. That is not the same thing at all. As per definition, the C.P.R. talk of value of service principle and they say this principle does not result in all traffic paying all that it can bear, and it goes on and says that the principle recognized is the contribution by different classes of commoditios. Do you take issue on that? Do you say that it does result in all traffic paying all that it can bear?

A. Not necessarily, no. I don't think that all traffic necessarily pays all it can bear even under the present prices.

COMMISSIONER ANGUS: If it did, you could never have a general freight rate increase.

A. That is right.

MR. BRAZIER: I think you said it was somewhere between those two extremes, is that right?

A. Yes, I sas suggesting that the actual rate lies somewhere between the two extremes.

THE CHAIRMAN: What two extremes?

A. Well, the lowest, rate , at least the bottom if you like, is presumably the out-of-pocket cost of the railway; that is, generally they say they won't go below their out-of-pocket cost.

Q. Yes.

A. Now, the upper limit on the shipper's side, the limit he will agree to pay, depends in part on whether or not he has alternative means of moving his goods.

Q. Yes, but where does the value of service come in then, where the shipper stops using the means of transportation?

A. Well, I would like to suggest, sir, that actually to me the value of service is a subjective criterion of rates rather than an objective.

Q. I see, all right.

A. Where he has an alternative means the maximum price is the best price he can obtain from the competing carrier, and he obviously won't pay any more than he can get from the competing carrier. However, if he must rely solely on the railway, his bargaining position is very much weaker generally speaking, so that the maximum may be almost equal to the final selling price of the commodity at the point of destination, or the maximum rate as determined by some regulatory board.

COMMISSIONER ANGUS: Has the railway any issue there, just that you have a floor and a ceiling and the Board fixes just and reasonable rates between the floor and the ceiling, and you are saying that in doing so they should conform to a principle that you are advocating?

A. That is correct. I am suggesting that on the value of service principle it is a subjecttive criterion and the Board has no way - -

THE CHAIRMAN: Why is it subjective?

A. Well, if we made an agreement to exchange some commodity at some price, provided there is no duress, whatever the final bargain is concerned, it must be fair and reasonable to both of us I should think. But no one, no outside person,no third party

could have any criterion by which - -

Q. Did I understand you to say just now that if the shipper finds some other means of transport which is cheaper for him, he will take that and leave the railways?

A. Yes.

Q. And then if he has no alternative means, he must keep on using the railways?

A. That is correct.

Q. Until he gets exhausted and stops altogether?

A. Yes, that is right.

Q. Is that what the value of service principle leads to? Is that what you are saying?

A. It could lead. I don't say they always drive a hard bargain.

Q. Whereas the cost of service principle if it applies, could never lead to that. Is that what you say?

A. Assuming that you have an objective criterion by which to judge the rate.

Q. I see.

MR. BRAZIER: Q. You have been dealing with these two extremes, Mr. Brown. You say that the actual rates - -

THE CHAIRMAN: Which system would you say is now being employed by the railways?

A. Value of service.

Q. Has it lead to these conjunctures that you mentioned there, where the shippers stop shipping altogether and go to some other means of shipping?

A. Well, what I have in mind is that it is probably no intent of the railway to actually discriminate, shall we say, between various shippers or various regions, but the outcome of that type of pricing may well lead to regional - -

Q. I am wondering whether, having regard to the experience that is behind this, you can show us any case where this result happened, which you think is a bad one, from the application of the cost of service system.

MR. BRAZIER: The value of service - -

THE CHAIRMAN: Either in a locality or in connection with the movement of some particular commodity or the condition of some particular class of shippers. Do you know of any case that you can give us? You could illustrate the matter for us if you wish. It would be very beneficial.

A. I would suggest again, and I cannot be specific, because I am not familiar with rates - -

Q. I know, but you have made a very close study and I thought perhaps you would have found something.

A. But the situation could be this, sir, I believe, that shippers, where there were alternative carriers - -

(Page 14828 follows)

Q. You are just working it out in theory?

A. That is correct.

COMMISSIONER INNIS: Then, you would say the present is rather a mixed system, isn't it, involving both value of service and cost of service?

A. Quite.

COMMISSIONER ANGUS: That again is common ground, isn't if, that if the rate is competitive the competition is the seat?

A. In that case, yes sir.

Q. There is no difference between you and the railways on that?

A. No, if I understand you correctly, that is right.

THE CHAIRMAN: You are advocating then, are you, that all transportation should be reduced to a cost of service system?

A. Well, in a very general and approximate way. You cannot find the exact cost of any particular movement.

Q. But that the cost of value ought to disappear?

A. The value of service?

Q. The value of service ought to disappear?

A. I suggest that as a criterion it is one that an oustide body, a regulatory body, cannot effectively apply because there is no way of examining it.

Q. You mean like the Board of Transport Commissioners?

A. That is right. If two people make a bargain, I suggest that a third person has no way of deciding just on terms of the bargain whether it is fair or not.

COMMISSIONER ANGUS: Your argument would be very nearly fatal to the argument held this morning on horizontal increases?

MR. BRAZIER: I think, Dr. Angus, that might be true if we were saying on a strict cost of service basis but, of course, we are not going that far.

COMMISSIONER ANGUS: No, but you are making a good many exceptions.

MR. BRAZIER: There is no doubt about that. Will you go on, Mr. Brown?

A. I say that such a pricing policy may well lead to a regional discrimination not as a result of any intent of the railways, but solely as a consequence of different degrees of bargaining power in different regions. This method of pricing also makes it difficult to arrive at any orderly division of functions as between types of carriers and since it is purely a subjective valuation it is beyond the powers of any third party to pass upon its reasonableness.

THE CHAIRMAN: You are arguing all those things?

A. Unfortunately, yes. You asked me for specific examples. I am not in a position to give examples. Obviously, all such rates arrived at by fair bargaining must be fair and reasonable to both carrier and shipper and as I understand it, provided the rate agreed upon does not exceed a specified ceiling, or give undue preference to some shipper, it is considered to be acceptable to the Board of Transport Commissioners.

MR. BRAZIER: Now, Mr. Brown, at various points throughout the Canadian Pacific brief they use the term "out-of-pocket costs". I would like your opinion as to whether or not the term is used consistently throughout the brief?

THE CHAIRMAN: That is, with the same meaning?

MR. BRAZIER: Yes.

A. The background to this question probably is simply that in order to strike an even balance between competitive types of carriers so that there will not be unfair competition as between carriers, then there should be some minimums. The question is whether cost of service -- I should say this was discussed in the staff -- whether out-of-pocket costs represented any kind of a criterion for minimums and we were unable to determine any reasonable definition and I could not find any definition in the Canadian Pacific brief because on Page 62 of their Part I, they describe "out-of-pocket costs" as the additional costs incurred by the railway in handling any particular traffic.

THE CHAIRMAN: Where is that?

A. On Page 62.

Q. Where abouts on the Page?

A. Near the top, the very first paragraph, the fourth line.

Q. Which paragraph?

A. The first paragraph, the third or fourth line.

Q. "Which are the following costs --"?

A. They say there "Additional costs incurred by the railway in handling any particular traffic".

Q. They say: "A rate is compensatory if it returns something more than out-of-pocket costs which are the additional costs incurred by the railway in handling any particular traffic."

A. That is right.

MR. BRAZIER: What does that wording suggest to you, Mr. Brown?

A. That wording suggests to me that they are meaning marginal or incremental costs but it does not appear reasonable to suppose that that is what is intended

because marginal costs in many instances must approach zero.

THE CHAIRMAN: Suppose in a given case they just got back their actual out-of-pocket costs then they are not being compensated?

A. No, if they just get back their out-ofpocket costs they are not being compensated; they say they must have slightly more.

Q. Well, that is all they say -- "A rate is compensatory if it returns something more than out-of-pocket costs which are the additional costs incurred by the railway in handling any particular traffic." That would seem to mean that out-of-pocket costs meant the additional costs?

A. That is right, but I would suggest that they cannot really mean that. If it does, those costs in many instances approach zero.

Q. Well, that has to be cleared up, of course -- "the out-of-pocket costs which are the additional costs incurred --"

MR. FRAWLEY: Additional to what?

THE CHAIRMAN: Well, perhaps Mr. Evans will clear that up later.

MR. BRAZIER: They make referece to it again on Page 79 comparing the net earnings per car mile on grain from Port Mc Nicoll to Montreal. They say that this movement returns at least the out-of-pocket costs. What does that appear to mean there?

MR. FRAWLEY: Is this in the prohibited area?

MR. BRAZIER: No, this is Port McNicoll to Montreal.

THE WITNESS: That is in the third paragraph on Page 79?

MR. BRAZIER: Yes.

A. In which, speaking of this movement of wheat from Port Mc Nicoll to Montreal they say that it returns at least out-of-pocket costs and --

THE CHAIRMAN: When they say that it returns out-of-pocket costs, does that still mean though that it is not compensatory? Is that what you mean?

MR. EVANS: No, all we are saying there is that there is no reason to doubt that those are not compensatory rates in that case.

THE CHAIRMAN: Are compensatory?

MR. EVANS: Yes, in the sense that they return out-of-pocket costs.

THE CHAIRMAN: What you say about them is that they return "at least out-of-pocket costs". Then, it means something more than out-of-pocket costs?

MR. EVANS: We did not attempt to make that study but all we say is that they are returning out-of-pockeet costs, and are therefore, non-compensatory but we are making a contrast in that respect with rates to Saint John.

THE CHAIRMAN: "But the rate to West Saint John does not provide sufficient revenue and is below out-of-pocket costs". Therefore, it is a loss but if it means exactly out-of-pocket costs and is not compensatory, would you say it is not a loss either?

MR. EVANS: We are quite frank to admit that to be compensatory a rate should return something more than out-of-pocket costs. We are not pretending to have said that the rate on grain from Port Mc Nicoll to Montreal is exactly out-of-pocket costs; we probably think it is slightly more than out-of-pocket costs but we have not studied that to the same extent as we did the other

rate. We simply do not suggest that they are not compensatory.

THE CHAIRMAN: On the other hand, you do not admit that they are non-compensatory?

MR. EVANS: No, I do not think we can make a case that they are non-compensatory.

MR. BRAZIER: What comment have you, Mr. Brown, in regard to that?

A. On Page 78, as already has been mentioned by Mr. Evans, the net earnings per car mile were 34.4 cents and the net earnings per car mile in the car system for car load traffic I think is 35 cents so that in this case it would appear that the out-of-pocket costs here means full average costs plus the full distributive profit.

Q. What you are in fact saying, Mr. Brown, is that in your opinion the terms appear to be used in different senses in those two places?

MR. EVANS: May I assure you that they are not.

MR. BRAZIER: Now on Page 60, the Canadian Pacific make this statement, the first sentence in the first full paragraph on that page:

> "From a practical standpoint the cost of service is impossible to apply."

They go on to mention such matters as accounting problems, the variety of services, and equipment, fluctuations in traffic, etc. What have you to say in regard to those objections?

A. This is dealing with the practical problem of cost of service. If by this is meant "a strict application" (I am taking the quotation on Page 61, the second two words from the quotation on Page 61,

where they say "strict application") if they mean the strict application we would agree. There would be no question about it. We have never advocated trying to determine the exact cost of any movement or of any kind of movement.

Speaking of the difficulties of costing the Canadian Pacific point out on Page 171 that there are means by which costs may be approximated. On Page 171 they are discussing the grain rates and they state there that there are means by which costs may be approximated. It seems to me that the most significant and useful measure is the one used throughout their brief, that is, the average car mile revenue in this instance. Since most of the accounting, especially for carload traffic, has to do with the car rather than the ton, including spotting, marshalling,line-haul, etc. it appears that this unit is by far the most useful. For example, one might load fifty tons of grain or five tons of motor cars in a box car. Since the loading and unloading is done by the shipper, roughly the costs to the railway are the same for moving both carloads over the same journey. Also, since the rates are based on weight, so much per hundred pounds, it would appear reasonable to set a rate for the carriage of motor cars at ten times that set in this instance for wheat.

If we might carry this thought one step further, assuming that 35 cents per car mile were an adequate level of revenue, and that the proper operating ratio was 80 per cent, then the system average cost per car mile would be 28 cents.

Q. That is 80 per cent of the 35 cents?

A. Yes, that is correct.

The seven cents being the system average operating profit per car mile. Now, due to variations in operating conditions for various types of traffic and in various parts of the system, the car mile cost for individual cases would vary about this system average, some being below, some above. It might be found after examination that in 95 cases out of 100 the cost varied by as much as 15 per cent below or above, for example, from 24 cents to 32 cents per car mile, which would give selling prices ranging from 31 cents to 39 cents per car mile. I am suggesting there if somebody was to make an examination of various traffic and various parts that they might find a spread of costs going from 24 cents to 32 cents in 95 out of 100 cases.

If the Board were made responsible for seeing that all rates were fair and reasonable in relation to the cost of providing the service, I would expect that they would set up some limits (how broad would have to be determined by experience) and as long as any rate proposed by the railways fell within these limits, the Board would accept it without question. However, just as the railways themselves examine a rate very carefully if it appears that it will not yield a specified amount in terms of car miles, so I think the Board might well ask for some proof that the proposed rate which fell outside these limits was justified.

Perhaps this is the point to state that the amendment we will propose shall be made to the Railway Act is to the effect that the rates should be fair and reasonable in relation to the cost of providing the service. It would then rest with the Board to devise such techniques as would satisfy it that the principle was being followed. As I have suggested, I would expect they might find it convenient to employ what might be called a statistical control of rates.

MR. BRAZIER: Q. Mr. Brown, in their brief the C.P.R. seemed somewhat alarmed that any change in pricing would either produce, or at least prevent them from filling up, any unused capacity. What have you to say as to that?

A. Unused capacity may result for a number of reasons.

THE CHAIRMAN: Where do they say that?

MR. BRAZIER: That is the general gist of what they are saying if the cost of service principle is adopted.

THE WITNESS: First, there is the return of empty cars. In this circumstance since the railway has already incurred most of the cost it seems a reasonable proposition to allow the railways by differential pricing to attempt to fill up this empty space. Secondly, there is always a considerable amount of unused capacity brought about by the pronounced seasonality of traffic. In this instance it is very doubtful whether thereis any gain by trying to build up traffic through sub-normal rates in that the costs generallyspeaking have not as yet been incurred and there is always the danger that traffic originally intended to fill in during the off season eventually works its way around to increase the peaks

and therefore ultimately incurring the company in full average costs. Much the same argument can be made for trying to fill in unused capacity in some part of the system. The most difficult period for a railway, as for other businesses, is when there is a general excess of capacity brought about by a dropping off in the level of business activity.

MR. BRAZIER: Q. Such as the situation that occurred in the 1930's?

A. Correct. Only in the case of a joint production, that is the return of empty cars, would it be profitable to levy a rate below our 28 cents per car mile. That is our example of cost. In all other cases as far as we can see, there would be an actual reduction in operating profits rather than an increase. However it is not necessary that the same rate of profit be extracted from each segment of traffic. To the extent that some traffic might be obtained at a rate which exceeded the 28 cents there would be an increase in the net profits. In the case of a joint production they could go below the 28 cents if necessary because they have already incurred the cost of bringing it back.

Q. That is all you have?

A. Yes.

Q. What would you suggest should be done about competitive rates?

A. First, let us consider carrier competition. It seems that two conditions might be possible, one in which the rates of the competing carrier are under regulation and the other where the rates of the competing carrier are not regulated. Where the competing carrier is operated under regulated rates --

THE CHAIRMAN: Q. That is the case in British Columbia?

A. That would be true. Where the competing carrier is operated under regulated rates then the Board of Transport Commissioners would take cognizance of such fact and not permit the railways to offer rates below cost, in our illustration 28 cents per car mile. This assumes that the Board has been satisfied that the rate set for the competing carrier is not below its cost. Where the competing carrier is unregulated --

Q. Suppose it is below its cost; would the Board allow the railway to compete nevertheless?

A. I would say yes.

Q. Run at a loss?

A. If the railway so desired.

Q. Somebody else must make up for it. All right, go on.

A. Where the competing carrier is unregulated, or operating at rates below cost, the Board would permit the railways freedom to adjust their rates in this section downward as far as they wish to go, provided the railways are prepared to absorb any loss incurred through such rates --

Q. Provided the railways what?

A. Are prepared to absorb any loss; the railways absorb the loss.

Q. I know, but they absorb it into what?

A. The shareholders, shall we say, absorb the loss.

COMMISSIONER ANGUS: Q. You merely mean you do not raise other rates to compensate?

A. That is right.

MR. BRAZIER: Q. You said provided the railways were not permitted --

A. To pass such loss along to other shippers.

Q. It would then become a question of the business judgment of the railway as to whether or not they wished to meet the competition?

A. That is right.

Q. And they would have to meet the competition out of their own profits.

THE CHAIRMAN: How could you follow that up when an increase in rates is asked for? You see the railways so far have always told us they do not go into that sort of competition, that their competitive rates are bound by certain principles. One of them is that they must bring back out of pocket expenses and something in addition.

MR. BRAZIER: In my final argument I will advance the proposition that if the railways are not giving such rates at the present time then this is no problem. They do not need to worry about it..

THE CHAIRMAN: Your witness says he would agree to give them that right to go on and carry certain traffic at a loss.

MR. BRAZIER: If in their business judgment they wish to accept it.

THE CHAIRMAN: How could you make sure that other shippers are not paying for it in the long run?

MR. BRAZIER: That would require some kind of accounting control over such rates.

THE CHAIRMAN: All right, go on. We have your idea.

THE WITNESS: In the case of market competition there seems no very good reason justifying a departure from compensatory rates. In the case of competition from foreign sources --

THE CHAIRMAN: Q. Pardon me a moment -- in the case of market competition?

A. In the case of market competition.

Q. As between railways or as between shippers?

A. As between shippers in the sense --

Q. Between localities?

A. Localities, that is correct.

COMMISSIONER ANGUS: Q. That is to say, you put the less favoured region out of action quite ruthlessly?

A. That is the ultimate proposition, that you make the most economic use of your resources in the country, but I thinkit was suggested in Victoria that many of these areas and producers now have a vested interest in certain rate relationships.

Q. I wanted to ask you a question about that vested interest. There is the question of the producer of potatoes who has no alternative crop, and who is helped by a rate that enables him to compete in a relatively distant market. Would you apply your principle ruthlessly or would you make an exception in the sense of giving him a lower rate and not making the railways take away that rate?

A. I think, Dr. Angus, it seems that the economic development of the country could probably be better left to, shall we say, the government of Canada.

THE CHAIRMAN: Q. We are asked to advise the government of Canada. I think you should answer Dr. Angus' question.

A. The question is whether --

Q. The question comes before us specifically according to regions. We want to see how far your theory would lead?

A. I think the answer boils down to this --

Q. Keep in mind the potato shipper.

A. You can either rectify or maintain employment in that area, shall we say, by some adjustment of the rates. If there is any downward adjustment of the rates obviously the railways must recover that somewhere in that instance, and it means the rates will have to be raised somewhere else.

Q. You have to depart there from your cost principle?

A. If you are going to use the railways to do that, but it seems to me the other alternative is to let rates fall where they will more or less, and the government of Canada in its judgment may consider that producing area should be kept alive and make some direct --

Q. Kept alive how? We are dealing with transportation.

A. By a subsidy, shall we say, a production subsidy or something of that nature.

Q. And in so far as transportation is concerned nothing should be done?

A. No, you try to keep the transportation aspect out of it.

MR. BRAZIER: Q. What do you say about competition from foreign sources?

A. In the case of competition from foreign sources any attempt by the transportation agencies to alter the existing trading conditions might produce results contrary to that which the government of Canada is trying to achieve through its international trade policies. If the government of Canada is trying to set up a certain trading pattern internationally the effect of changing the cost of transportation internally might well run counter to what the government of Canada is trying to do.

THE CHAIRMAN: Q. What would you do in that case?

A. I suggest if a producing area in Canada is being seriously affected by imports from abroad then it would be up to the government of Canada to do what they thought was right, either by tariff, subsidy or something of that nature.

Q. You say "tariff". You mean customs tariff?

A. Yes.

Q. A customs tariff is just as prohibitive as a higher freight rate, is it not? It has the same purpose, to keep foreign goods out?

A. What I am suggesting is if you leave it to the transportation agency to apportion the economic activities within the country by adjustment of rates they may actually be at cross purposes with what the people of Canada or the government of Canada are trying to achieve.

Q. Then you would say that these rates should remain as they are on this cost of service basis for outsiders as well as --

A. By and large, recognizing as I have already said, the present vested interests that you have. You cannot ignore them. You have to admit they are there and that they have to be protected for the time being.

MR. BRAZIER: Q. I think you said before it would take many years to bring the principle into full force?

A. Yes, I think it would take considerable time for a complete change-over.

THE CHAIRMAN: Can you tell us whether that principle is being applied anywhere now?

MR. BRAZIER: I do not think it is, but there is a reference which I wish to give you, having in mind

that you had asked once before whether or not it had ever been considered. Of course you will remember that we quoted Professor Healey. Having concluded my principal examination in chief I should like to refer the Commission to a study conducted in the United States. There is a letter reporting it to the vice-president and speaker of the House of Representatives. It is known as Senate Document No. 84, Comparison of Rail, Motor and Water Carrier Costs.

THE CHAIRMAN: What year is that?

MR. BRAZIER: It is dated 1944. I think the study was conducted over a number of years and the final report was submitted in 1944.

THE CHAIRMAN: It deals with what generally?

MR. BRAZIER: It is a comparison of rail, motor and water carrier costs. In referring the Commission to this it is not with any idea that the cost figures which were developed in the study, and which applied to certain districts of the United States, would apply in Canada. I do not think we could say, by any stretch of the imagination, that the results of their study would apply in the same way in Canada, but I did want to draw the attention of the Commission particularly to a sentence on page 11 of the report which reads:

> "Each type of transportation can be permitted and encouraged to develop according to its inherent advantages, and the public may be assured of obtaining the benefits of the most economical form of transportation only through the adoption of rate making policies requiring that rates shall conform more closely to costs."

They were attempting to find out when it was more economical, from the national point of view, to ship by truck, water carrier or rail, and that is the statement out of that study to which I wish to call the Commission's attention.

THE CHAIRMAN: We will adjourn until to-morrow morning.

(The Commission adjourned at 4.45 p.m. to meet tomorrow, Friday, February 10, 1950, at 10.30 a.m.)